

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
CARMINE TRAMUNTI, et al.,  
Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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253 DEFENDANTS-APPELLANTS' JOINT APPENDIX  
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1 jhd

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA

6 vs

73 Cr. 1099

7 CARMINE TRAMONTI, et al.,

8 Defendants.  
9 -----X

10 Before:

11 Hon. Kevin Thomas Duffy,

12 District Judge.

13 New York, N.Y.  
14 January 7, 1974  
10:00 a.m.

15 APPEARANCES:

16 PAUL J. CURRAN, Esq.

17 United States Attorney for the  
Southern District of New York

18 By: WALTER M. PHILLIPS, JR., Esq.  
THOMAS FORTUIN, Esq.,  
19 Assistant United States Attorneys

20 FOR THE DEFENDANTS:

21 HERBERT SIEGAL, Esq.

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THE COURT: I don't know if you gentlemen all know Judge Conner, who is sitting with me today. You will get to know him, I am sure.

Mr. Rosenberg?

MR. LOPEZ: Mr. Rosenberg is not present, but he is coming, your Honor.

THE COURT: Mr. Maas?

MR. GALLINA: Your Honor, I am Mr. Gallina. I am also from the same law firm as Mr. Maas. I am representing Mr. Delvecchio. You may have Mr. Maas listed there. He originally was going to represent Mr. Pellegrino, I believe, and that situation has changed.

THE COURT: All right. At our last meeting, gentlemen, you elected two lead counsel, Mr. Rosenberg and Mr. Maas. Is there any thought at this point of electing somebody else who will show up?

MR. LOPEZ: Your Honor, I think that someone



should be selected. As far as Mr. Rosenberg is concerned, there may be other problems.

THE COURT: All right, Mr. Lopez. You are selected.

MR. LOPEZ: I am selected?

THE COURT: That's right. I told you the first time we had an election. This time it is a selection.

The first thing I think we ought to cover today is the number of peremptory challenges to be permitted. I intend to impanel the jury of 12 plus six alternates. The government will get extra challenges, but I can't give you the number right now because you will find out as I go through what defendants get.

The defendants will get the ordinary number of challenges, plus one for each defendant. The way the challenges will be exercised, we will start off with five regular challenges by lead counsel. I assume that that will be done in consultation with other counsel. That will be followed then by two challenges by the government, then five challenges by the defense, with each defendant exercising one in the order in which they are named in the indictment. Then we will have two challenges again by the government, and we will go through it in flights like



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4

2 that.

3 Now, various motions have been made for bills  
4 of particulars, extra bills of particulars, and further  
5 discovery. I assume that those people who have made the  
6 motions know that they were disposed of on the day I  
7 received the motion. They were done by endorsement.

8 Various motions were also made for severance.  
9 Those motions generally were denied. However, we have  
10 gotten to the point now where it's up to the government  
11 to advise us who they are severing.

12 Mr. Siegal, do you have difficulty in hearing  
13 me?

14 MR. SIEGAL: Not me, sir. Thank you.

15 THE COURT: All right. First of all,  
16 Mr. Phillips, or Mr. Curran --

17 MR. CURRAN: Mr. Phillips, your Honor.

18 THE COURT: Mr. Phillips will be handling it?

19 MR. CURRAN: Yes.

20 THE COURT: Mr. Phillips, how many defendants  
21 are still fugitives?

22 MR. PHILLIPS: I don't have the number on the  
23 top of my head, but I can list them from the indictment,  
24 your Honor.

25 THE COURT: Fine.

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2 MR. PHILLIPS: They are defendants Carmine  
3 Pugliese, Pat Dilazio, Warren Robinson, Basil Hansen,  
4 Estelle Hansen and John Doe, also known as Jimmy Wyatt  
5 Zarp. That is a total of six.

6 THE COURT: The cases against those six  
7 defendants will be severed for trial at some future time.

8 If I read my newspapers correctly, it appears  
9 that one of the defendants has passed away. Is that  
10 correct?

11 MR. PHILLIPS: Yes, your Honor. George  
12 Tontoian, the day before Christmas.

13 THE COURT: Needless to say, he can't go to  
14 trial.

15 I had a request for a physical examination of  
16 one of the defendants. Is that physical examination done?

17 MR. PHILLIPS: There have been physical  
18 examinations conducted as to two defendants, your Honor.  
19 There has been one conducted as to Frank Pellegrino, the  
20 result of which I am informed is that the doctor who  
21 examined him concluded that he is able physically to  
22 stand trial.

23 The second defendant who was examined was  
24 examined this past weekend and that is Richard Forbrick.  
25 We have not been able to talk to the doctor yet. We



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2 anticipate speaking to him today to find out at least  
3 initially what his conclusions are with respect to  
4 Forbrick's ability to stand trial.

5 THE COURT: All right. Is counsel here for  
6 the defendant Pellegrino?

7 MR. ROCHMAN: Yes. Good morning, your Honor.  
8 Irwin Rochman.

9 THE COURT: Yes.

10 MR. ROCHMAN: I have been informed by  
11 Mr. Phillips and Mr. Fortuin when the examination took  
12 place. I have not yet received a copy of the doctor's  
13 report.

14 THE COURT: Mr. Phillips, will you give him  
15 a copy?

16 MR. FORTUIN: Yes.

17 THE COURT: I want that delivered before the  
18 end of the day today.

19 Is counsel here for the defendant Forbrick?

20 Mr. Phillips, has counsel filed a notice of  
21 appearance?

22 MR. PHILLIPS: Mr. Patrick Broderick repre-  
23 sents Mr. Forbrick, your Honor. I have no knowledge as to  
24 the reasons why he is absent today.

25 THE COURT: Counsel for Mr. Pellegrino, do

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2 you have a physical examination report of your own?

3 MR. ROCHMAN: No, your Honor. We had agreed  
4 upon a physician.

5 THE COURT: You agreed upon the physician.  
6 All right.

7 Mr. Phillips, that leaves us with 28 defend-  
8 ants, is that correct?

9 MR. PHILLIPS: Your Honor, there will be a  
10 severance as to one other defendant, Anthony Loria.

11 Also, although it does not eliminate a  
12 defendant, the government will move to sever Count No. 26  
13 from the indictment. That count charges only Frank Russo  
14 with distributing narcotics on or about January 10, 1973.

15 THE COURT: All right. The motions for the  
16 severance of Anthony Loria and Count 26 are both granted.

17 That leaves us with 27 defendants, is that  
18 correct?

19 MR. PHILLIPS: No, your Honor. There are a  
20 total of I believe 32 named in the indictment. Six were  
21 fugitives. So that already takes us down to 26.

22 Mr. Toutoian, Loria --

23 THE COURT: 24.

24 MR. PHILLIPS: Your Honor, it is my under-  
25 standing, I do not think counsel for the defendnat Dawson



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2 is here, but I think that there will be a disposition as  
3 to his case some time this week.

4 THE COURT: All right. A general question:  
5 is there to be a disposition as to any other defendant?

6 The silence is absolutely deafening.

7 MR. CALLINA: Your Honor, there have been  
8 discussions between the U. S. Attorney and myself concern-  
9 ing defendant Lentini. I believe that those discussions  
10 will be terminated this morning some time.

11 THE COURT: All right. I have had various  
12 motions to sever, as I said, generally which I have  
13 denied. However, on my own, my own motion, I am going  
14 to bifurcate the trial.

15 Does everybody understand what I mean by that?  
16 I will get to it.

17 Count 2 of the indictment charges Louis  
18 Inglese with basically occupying the position of organizer,  
19 supervisor and manager of a series of violations. That  
20 count will not go to the jury, if we get to the jury at  
21 all, until after a verdict has been returned by the jury.  
22 In other words, what I am going to do, we are going to  
23 concentrate on the crimes alleged with the exception of  
24 Count 2. If the jury returns a verdict of guilty we will  
25 put in whatever other evidence the government and the

1 defense want to put in and I will charge the jury on that  
2 court alone.

3 Is there any objection to this procedure?

4  
5 MR. OPPENHEIMER: No, your Honor, not at this  
6 time. Edwin J. Oppenheimer, for Nancy Roemer, counsel  
7 for England.

8 Your Honor, for the record, there has been a  
9 motion to dismiss Count 2 on constitutional grounds and  
10 we have not been advised of the ruling on that. I  
11 assume from your Honor's statement that motion has been  
12 denied.

13 THE COURT: I believe there was a ruling and  
14 I believe it was denied. In fact, I am sure it was denied.

15 If you have no ruling up to this point you  
16 have one now.

17 MR. OPPENHEIMER: Thank you, your Honor.

18 THE COURT: A question always comes up, I  
19 think in every large case, as to what is to be done with  
20 the jury.

21 Mr. Phillips, do you have any motions in con-  
22 nection with that?

23 MR. PHILLIPS: May I have a moment, your Honor?

24 (Pause.)

25 MR. PHILLIPS: Your Honor, we have not had an



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2 opportunity to address ourselves to this particular  
3 problem and I would request of the Court an opportunity  
4 to do so. Is it possible that we could either give the  
5 Court our ideas or position on this particular subject  
6 at the conclusion of this pre-trial conference or later  
7 on today or some time later in the week?

8 THE COURT: The idea was to take care of all  
9 these problems right now, so let's do it toward the end  
10 of this pre-trial conference.

11 First of all, let me ask, do the defense have  
12 any motions in connection with the jury? What I am talk-  
13 ing about basically is keeping them from any potential  
14 newspaper or other media type of exposure to the trial  
15 by putting them in a hotel for the duration of the  
16 trial. I am not saying that I am going to do it. I am  
17 just asking if anybody has any thoughts on it whatsoever.  
18 If you do, let me hear them now.

19 MR. GALLINA: Your Honor, for the defendant  
20 Delvecchio, I would move, if the case does go to trial  
21 on the 11th, for the sequestering of the jury.

22 THE COURT: You would move for it?

23 MR. GALLINA: Yes, I would.

24 THE COURT: Do I hear any objections?

25 MR. LOPEZ: No objections. As a matter of

fact, Frank. Lopez for the defendant Dinapoli, we join in that application, your Honor, and for a very specific reason. In collateral matters which involve the trial proper of this action there are other agencies over which the Court has no control and the activities of those agencies and the publicity that emanates from those agencies may well reflect upon the trial. So there is a reason for Mr. Gallina's motion in which Dinapoli certainly joins.

MR. WARNER: Your Honor, Kenneth Warner, for Joseph Ceriale. I also join in the motion, your Honor, and I also call the Court's attention to the recent articles that have been in the newspapers and particularly in New York Magazine, which caused Judge Frankel in a peripherally related case --

THE COURT: I don't read New York Magazine, but I am glad you brought it to my attention. I will have to get whatever is involved there.

MR. OPPENHEIMER: Your Honor, I might say on behalf of defendant Inglese -- I think possibly this might involve Mr. Gallina's clients -- in conjunction with that, a rather lengthy article appeared some time ago. also in New York Magazine concerning Mr. Inglese in a related case.



1  
2 MR. WARNER: That is the article I am refer-  
3 ring to.

4 THE COURT: Would you be good enough to let  
5 me have a copy of it?

6 MR. OPPENHEIMER: Yes, your Honor.

7 THE COURT: In view of the fact I don't read  
8 the magazine I didn't know a thing about it. That is the  
9 kind of thing, however, I am trying to avoid.

10 MR. PHILLIPS: Your Honor, in light of  
11 counsel's applications, the government's position is that  
12 we have no objection to the sequestration of the jury in  
13 this case.

14 THE COURT: All right. Let me talk to you  
15 about hours of court and the conduct of the court. I  
16 believe in running a fairly tight courtroom. Because of  
17 the number of people involved in this case I am afraid  
18 that I am going to have to insist upon the guidelines that  
19 I laid down at our last meeting and the guidelines today.  
20 When I say "insist" I mean insist.

21 I expect every attorney to do a completely  
22 professional job. Counsel, however, will be held responsi-  
23 ble for any outbursts, anything else in the courtroom,  
24 unless it appears to me that those outbursts are com-  
25 pletely unexpected by counsel. I am warning both counsel

and defendants I intend to be very severe in the handling of this. This case is going to be tried in a completely professional way.

Now, court will start at 10:00 o'clock promptly. You will have a morning break of about 15 minutes. We will stop for lunch at 12:30. There is a reason for that. In case you haven't noticed it, there must be 50 courts in the area. All of them let out at 1:00 o'clock, save me. I hate standing on line and I am sure you fellows do, too. We will break at 12:30. We will resume at 2:00 o'clock promptly. We will have in the afternoon a recess and we will finish at 4:30, again, promptly.

Now, the set-up of the courtroom. We will be located in Courtroom 110. There are two reasons for it. It's the largest courtroom in this building, so that we will not have counsel spread all over the place, including the jury box, as we do today.

Lead counsel -- and at this point, Mr. Lopez, you are it --

MR. LOPEZ: Yes, your Honor.

THE COURT: -- you will go with Mr. Delberian, who is the court clerk, today and report to me by 5:00 o'clock how you want the defense counsel and the defendnats seated in that courtroom.



Now, you will notice that one of our colleagues over here, one of your colleagues, has a little difficulty in hearing.

If you would be good enough, sir, to talk to Mr. Lopez to make sure that you get some place where you will hear --

MR. LOPEZ: We have already spoken, your Honor.

THE COURT: All right. I do intend to have the loudspeaker system set up and going in that courtroom, so everybody should be able to hear.

Let me know by 5:00 o'clock this afternoon. I will have to make arrangements for the proper number of tables and chairs and so on and so forth.

Now, a question was raised at our last meeting in connection with whether I will permit the government to cross-examine a defendant with respect to his prior record. I gave a tentative ruling at that meeting that I would. The ruling stands. I will. However, it's got to be something which is not remote, and I mean remote in two ways, remote in time or remote in the type of offense.

Now, it's my understanding that we have two motions to suppress, one by you, Mr. Siegal.

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2 MR. SIEGAL: Yes, sir.

3 THE COURT: Unfortunately, I did not bring  
4 down the other motion. Who made the other motion to  
5 suppress?

6 MR. LOPEZ: I did, your Honor. Would you  
7 like a copy of it?

8 THE COURT: Wait a second. We have three  
9 motions to suppress. My apologies. It just proves,  
10 like Mr. Phillips showed before, I am not very good at  
11 arithmetic.

12 Mr. Lopez, if you will give me a copy of  
13 yours.

14 MR. SIEGAL: My name is Martin J. Siegel.  
15 I am appearing for John Springer.

16 THE COURT: Yes, I remember your motion. If  
17 you have an extra copy I would appreciate it.

18 MR. FORTUIN: Your Honor, with respect to  
19 the suppression motion on behalf of John Springer, the  
20 government opposes a hearing on that motion, and I have  
21 an affidavit which I will hand up.

22 THE COURT: Other than these motions, which  
23 I have not disposed of, are there any motions to be made  
24 by any counsel?  
25



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2 MR. ROCISMAN: I have certain motions for dis-  
3 covery on behalf of Mr. Pellegrino which I held off on  
4 passing the outcome of this examination. I indicated to  
5 one of your clerks that I would like the opportunity to  
6 make those motions orally at the conclusion of this con-  
7 ference.

8 THE COURT: All right.

9 MR. KING: If your Honor please, I am Leonard  
10 King for John Gamba. In answer to a letter I addressed  
11 to your Honor on December 21st for a further bill of  
12 particulars, Mr. Phillips -- I respectfully direct your  
13 Honor's attention to overt act 11 -- merely stated "the  
14 heroin was received from Harry Pannirello," who I note is  
15 one of the co-conspirators.

16 As I wrote your Honor, Mr. Phillips promised  
17 that he would give us exact dates, etc., and the only  
18 thing I have thus far that concerns my defendant, sir,  
19 is that he is supposed to have had possession of heroin  
20 in the "early morning of January 72."

21 THE COURT: "Early evening hours," isn't it?

22 MR. KING: "Early evening hours" -- thank you,  
23 sir -- "of January 72."

24 I think I am entitled to, if not exact, a  
25 more approximate date in January.

1 THE COURT: Mr. King, unfortunately -- maybe  
2 you didn't spot it in the Law Journal -- that motion was  
3 disposed of.

4 MR. KING: I didn't spot it, no.

5 THE COURT: All right. You can go to my  
6 chambers and they will show you a copy of the endorsement,  
7 one of my clerks will. All right?

8 MR. KING: Thank you very much, sir.

9 MR. WARNER: Kenneth Warner for defendant  
10 Cerialle. Your Honor, unfortunately I was not aware that  
11 the Court had disposed of my motions by endorsement. I  
12 spoke to your Honor's secretary just now.

13 I would appreciate it if I could reserve any  
14 additional motions I have for this afternoon, after I  
15 have had an opportunity to examine the Court endorsements.

16 THE COURT: Sure.

17 MR. SEGAL: Murray Segal for the defendant  
18 Henry Salley, whom I have met for the first time today,  
19 your Honor.

20 I would like to reserve my right at least for  
21 the balance of the day to address myself to the particu-  
22 larization as to overt act 14, which I think is too  
23 imprecise for me properly to defend.

24 THE COURT: All right.



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MR. STOTSENBURG: Alan Stotsenburg, your Honor, for defendant Mary Jane Salvani. We have made a motion for suppression, but I understand that your Honor would not object if that is deferred until certain other issues, such as severance and mental competence to stand trial, have been resolved.

THE COURT: On the question of mental competence, I will tell you right now, if you feel that you want to have this examination, and apparently you do because you made the motion, all I need to have is an order and I will sign it.

MR. STOTSENBURG: I understand that your Honor had entered an order to that effect.

THE COURT: I didn't enter it yet, not to my knowledge.

MR. PHILLIPS: Your Honor, I understand that arrangements were made for Mr. Stotsenburg's client to be examined this morning at 8:00 o'clock and I was informed an order to that effect had been signed or was being prepared.

THE COURT: All right. We will make it nunc pro tunc.

MR. STOTSENBURG: Your Honor, there is another point. All I wanted to say is unless there is an

objection on the part of Mr. Phillips -- Mr. Phillips and I can discuss the matter -- to the extent there is any issue of waiver of suppression, it's not waived.

THE COURT: I understand.

MR. STOTSENBERG: Thank you, sir.

MR. OPPENHEIMER: Your Honor, on behalf of the defendant Inglesse -- and the substance of this motion may affect other counsel in this case -- during the past week Mr. Phillips and I were engaged in lengthy communication with respect to the turning over to the defendant of the electronic surveillance tapes in this case. Tapes amounting to what I would estimate from having listened to some of them are ten hours long involving only the defendant Inglesse are now being reproduced. The originals of those tapes will be returned to the government today and I would expect to have copies of those tomorrow and the following day.

However, at the time that we moved for discovery and inspection we requested of the government whether or not any other electronic surveillance of the defendant Inglesse existed, and if I mischaracterize the representation I am sure Mr. Phillips will correct me, but we were told that other than the tapes that we were getting there were none.



We have now discovered that in the course of the surveillance conducted in the case of United States against Capra, which was tried in this courthouse, the defendant Inglese has been overheard on numerous reels of tape. We have no way of knowing how many hours of interception involve him.

I also might add that this overhearing also involved the defendant Christiano, who Mr. Fisher represents, and he is not here.

Mr. Phillips tells me that the agents who monitored the Capra tapes will be able to inform him today as to the length and the quantity of the overhearings as to Inglese and Christiano. But if it turns out that those overhearings -- let me just say this: irrespective of the length of those overhearings, there is a very substantial and what we would anticipate to be lengthy motion to suppress the fruits of any surveillance made, and frankly, in view of the lateness of the turning over of all of the electronic surveillance in this case, I would think that on behalf of the defendant Inglese it would be extremely difficult, if not impossible, to properly formulate these motions in time that they can be decided in a hearing held before the proposed trial.

Accordingly, Inglese would ask for an adjourn-

ment of the case as to him or, in the alternative, severance of the trial, waiving Sixth and Second Circuit speedy trial rules and rights.

THE COURT: All right. Mr. Phillips.

MR. PHILLIPS: Your Honor, I would like to take this entire tape matter up at this time and start from this point:

On December 20, 1973, at my request, a pre-trial discovery session was held with myself and all defense counsel. At that time I told defense counsel that there would be no tapes used by the government in the trial of this case.

I indicated, however, that with respect to certain defendants there were tapes that involved them actually being intercepted, their conversations, and that we would make those available to defense counsel, and I listed the defendants that were so involved, and they included Inglesse, Lentini, Russo, D'Amico, Tolopka and Toutoian. As your Honor indicated earlier, Toutoian is dead at this time, so it becomes moot with respect to him.

As to the other defendants, the only attorney who made any attempt to obtain these tapes when they became available last week was Mr. Oppenheimer on behalf



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of Mrs. Rosner, and I turned over to him at that time the two tapes relating to Mr. Ingless, which amount to approximately five or ten minutes of conversations with Mr. Barnaba.

Now, the tapes that I also turned over to Mr. Oppenheimer last week do not involve and do not contain the defendants' voices. They are therefore not discoverable under Rule 16 prior to trial. What they amount to, however, is 3500 material, and if counsel were to look at Section 2 of Rule 16 they would see that 3500 material is not discoverable prior to trial. It's explicitly so stated in the statute.

However, in order to make the orderly procedure of the trial go as quickly as possible, I did make available to Mr. Oppenheimer and any other counsel who wished to have copies of it, tapes of government witnesses as they were being debriefed, and those included tapes of Mr. Barnaba, tapes of Mr. Stasi and tapes of Mr. Pannirello. The only attorney or only attorneys who called me with respect to those particular tapes were Mr. Oppenheimer on behalf of Mrs. Rosner and a woman whose name escapes me right now from Mr. Ellis' office, and I believe that was the extent of it, although I think that Mr. Epstein called me and asked me about the tapes

and I told him that I was turning them over, I had turned copies over to Mr. Oppenheimer, and I understand that he took them to a processing business, which is making copies of them.

Now, the sum total of these recordings is nowhere near ten hours. I would point out again, I would reiterate, that the government is under no obligation whatsoever to make available these tapes prior to trial. In fact, these tapes, being 3500 material, under the law are not producible until the completion of the direct examination of the witness. Your Honor, on November 16th--

THE COURT: Hold on. We are talking about apples and oranges. You are talking about apples and he is talking about oranges.

MR. PHILLIPS: No. He mentioned these same tapes last week.

THE COURT: Let me see if I have this right. What you are talking about are interceptions of your defendant in some other case, is that correct?

MR. OPPENHEIMER: Yes, and as well, having listened to some of the NAGRA recordings, that is, the wireless body recordings, it is our belief that the defendant Inglese does appear on those. In terms of the



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2 length of those -- Mr. Phillips has not yet responded and  
3 I didn't want to cut him off.

4 MR. PHILLIPS: I was about to get to these  
5 other tapes which your Honor just brought up.

6 THE COURT: All right. Let's talk about those.

7 MR. PHILLIPS: In addition, there are --  
8 Mr. Oppenheimer mentioned the Capra case -- there are  
9 telephonic interceptions that were made and there were  
10 bugs that were used in the investigation that led up to  
11 the case of United States versus Capra as well as a number  
12 of other cases that resulted in federal indictments.  
13 Those are state bugs and state wiretaps.

14 It is the government's position that the wire-  
15 taps involved in those cases have nothing to do with the  
16 investigation in this case. However, I did tell  
17 Mr. Oppenheimer that I would make available to him, and  
18 did last week, the applications for the wiretaps and bugs  
19 in connection with those cases. I also said that I would  
20 make available to him whatever wires existed where  
21 Inglese appeared. I also gave to him last week transcripts  
22 of telephone conversations where Inglese appeared.

23 I indicated to him that I would not know until  
24 today, because the detective who was responsible for the  
25 surveillance had been on leave for the last two weeks and

1 was returning today, whether the transcripts that I gave  
2 him constituted the sum total of all the interceptions  
3 involving Mr. Inglese, and I am prepared to give  
4 Mr. Oppenheimer the answer to that today after I have had  
5 the chance to consult with that detective, who is  
6 Detective George Hatten.

7  
8 In any event, it being the government's  
9 position that since we are not introducing any inter-  
10 ceptions of Mr. Inglese or, for that matter, any other  
11 defendant, or, at this point in time, any fruits resulting  
12 from those interceptions, that would be at best a matter  
13 to be taken up at a post-trial hearing, as to whether or  
14 not the government's evidence that was introduced in this  
15 case was tainted as a result of the illegality, if there  
16 is any illegality, of the wiretaps or bugs involved in  
17 that wholly separate investigation.

18 MR. OPPENHEIMER: From what Mr. Phillips says,  
19 I take it that we are in agreement that there is going to  
20 have to be a hearing with respect to the fruits.

21 THE COURT: I don't know, gentlemen. You are  
22 in a much better position than I am. I know what the  
23 indictment says, I know what the bill of particulars says.  
24 You folks at least may know some of the facts. I don't.  
25 In view of the fact that I don't I can't make a ruling on



1 jhd

2 it until I find out what the facts are.

3 There may have to be a hearing at the end of  
4 the case. If there has to be we will have it.

5 MR. OPPENHEIMER: Excuse me. At the end of  
6 the case, your Honor?

7 THE COURT: During the case, whenever it  
8 comes up. I don't know.

9 MR. OPPENHEIMER: Let me say, your Honor, that  
10 the Second Circuit has recently spoken on the proper pro-  
11 cedure for conducting these hearings. In an opinion by  
12 Judge Friendly it was suggested that these taint hearings  
13 not be held during the course or subsequent to trial,  
14 but prior to trial. I believe that was the latest  
15 Birrell case, your Honor.

16 MR. PHILLIPS: That was the Birrell case, your  
17 Honor, where it was ruled that the government's entire  
18 case was based on the fruits of an illegal search, that  
19 that search should be litigated prior to trial. However,  
20 that is not the situation here.

21 We are not introducing evidence that was based  
22 on any search that is attacked at this time. Our investi-  
23 gation in this case is based on matters that are entirely  
24 separate from what transpired in the Capra, Zanzardino,  
25 and other cases that Mr. Oppenheimer has reference to.

THE COURT: I think I ruled on this once. Take a look at pages 17 and 18 in the prior transcript. You will find my ruling on it.

Do we have any other motions?

MR. PHILLIPS: Your Honor, I would like to just complete for the record the government's position viz-a-viz all of the tapes involved in this matter.

Mr. Russo, as I indicated, appeared on several tapes, six in total. I made those available, turned those over to a representative of Mr. Dowd's office last week. I forgot to mention that. I only bring that up for that reason.

In addition, I am informed that there are and I have actually listened to yesterday certain tapes involving a government witness, Frank Stasi, with an undercover police officer by the name of Cassella. The government does not intend to use this, but we deem that this would be considered 3500 material. The total amount that I have listened to in terms of minutes is, as to the cassettes, perhaps 45 minutes, as to the NAGRA, somewhat longer, in the vicinity of two hours maybe.

It would be my suggestion -- and I leave this obviously to defense counsel -- that they designate somebody or more to listen to these tapes and to do whatever



1 they wish. I will make available copies if they wish to  
2 have them or they can have somebody come to our office  
3 and listen to them.

4  
5 MR. GALLINA: Your Honor, insofar as motions  
6 in this area, I am in possession of the government's  
7 letter pursuant to discovery of 10 December 1973 and in-  
8 sofar as the defendant Delvecchio, I want to know whether  
9 I can still rely on that statement in view of what is  
10 going on, that there is no telephonic interception involv-  
11 ing my client. I refer your Honor to page 3 of that dis-  
12 covery statement.

13 THE COURT: All right.

14 MR. GALLINA: Is that the government's position  
15 still?

16 MR. PHILLIPS: That's correct.

17 THE COURT: I believe it is.

18 MR. PHILLIPS: That's correct. Mr. Gallina,  
19 who represented Mr. Delvecchio in a case before Judge  
20 Gagliardi, United States versus Barmore et al., knows that  
21 that involved numerous telephonic interceptions including  
22 his client. Again, the government's position is the same.  
23 This case has nothing to do with that case.

24 He had been given at that time, which was last  
25 year, March and April, all of the matters involved there.

1  
2 they had a full scale hearing regarding minimization of  
3 these wires.

4  
5 MR. GALLINA: Your Honor, if I may quote the  
6 government's sentence, page 3, second paragraph:

7 "As to electronic surveillance, the government  
8 has no telephonic interceptions involving any of the defend-  
9 ants in this case."

10 Now, that is not equivocal. It doesn't say  
11 "in this trial I don't intend to use any such telephonic  
12 interceptions." It says they do not possess any tele-  
13 phonic interceptions.

14 THE COURT: Perhaps the words could be a little  
15 bit more precise. But let's be honest. The U. S.  
16 Attorney's office cannot make a representation that the  
17 government has no tapes on anybody. What you have to do  
18 in order to do that is have an all-agency check, and as  
19 soon as the check is made -- it takes about three weeks --  
20 as soon as it's made it's out of date.

21 I think I understand the government's  
22 position. I think you do too. As for the other  
23 problems, I am going to think about those for a while.  
24 Don't go away.

25 MR. GALLINA: Your Honor, if they do have  
telephonic interceptions or electronic surveillance of my



1 client I would in addition wish to test the probable  
2 cause for such electronic surveillance and whether the  
3 surveillance, if illegal, was the product of any fruits,  
4 and whether the warrant itself can be contravened and,  
5 therefore, any fruits or evidence suppressed.

6  
7 MR. OPPENHEIMER: Your Honor, I think it  
8 important just for the record that your Honor understand  
9 the possible magnitude of this motion.

10 The orders in the Capra case, at least, from  
11 seeing them in Mr. Phillips' office, if I saw them  
12 correctly, I could gently describe as being voluminous.  
13 Now, he has given me a number of transcripts right here  
14 in which the defendant Inglese's voice has been recorded.

15 In light of your Honor's ruling and the  
16 government's concession, we will be making those motions.

17 THE COURT: As I said, I want to think about  
18 it.

19 Outside of the electronic surveillance area,  
20 does anybody else have a motion?

21 MR. LOPEZ: Yes, your Honor. For Dinapoli,  
22 we made a motion, I think the government has consented to  
23 it, just a question of determination of the date, for  
24 production of government witnesses for interview by  
25 defense counsel, witnesses that are in custody or that the

government has secreted, to give defense counsel an opportunity to interview them.

At the last discovery conference that we had with Mr. Phillips he indicated that he would set a date for us and that is the only thing I would like to clear up.

THE COURT: As professionals you can set the date yourselves. You don't want me to do it, do you?

MR. PHILLIPS: Your Honor, I will state for the record that I decided on this Thursday, which is January 10th, I believe, at 3:00 p.m. in our office, as to the time and place.

THE COURT: I would suggest, Mr. Phillips, you make it earlier than 3:00 p.m. I am serious about it. Why don't you make it immediately after lunch?

MR. PHILLIPS: On Thursday, 2:00 p.m., if that is satisfactory.

MR. LOPEZ: Thank you, Mr. Phillips.

MR. PHILLIPS: That will be in 306, United States Courthouse.

MR. ELLIS: Your Honor, Robert Ellis for defendant Mamone. Your Honor, on the first round of motions we moved to dismiss the first count of the indictment, which is the only count that Mamone is on, on the



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2 ground it's vague and failed to comply with Rule 7(c).  
3 Your Honor denied that motion -- I am reading from the  
4 transcript -- but without prejudice to renewal within 10  
5 days after the defense has an opportunity to see particu-  
6 larization, the bill of particulars, and to get discovery

7 Your Honor, we have gotten the discovery that  
8 we are apparently going to get and the particulars --

9 THE COURT: Mr. Ellis, don't let me cut you  
10 off, but let me just ask, did you write me a letter which  
11 I received today in connection with this particular thing?

12 MR. ELLIS: My letter was addressed to the  
13 problem of the tapes, your Honor, but it also brought this  
14 matter up, yes.

15 THE COURT: All right. Rather than reiterate  
16 what is in the letter, the motion that you made before to  
17 dismiss for uncertainty, vagueness and so forth, you are  
18 renewing that motion at this time, is that correct?

19 MR. ELLIS: Yes, your Honor, but I would just  
20 like to make one further statement in connection with that  
21 if I may, and that is that the only two facts that we have  
22 been given are that Mamone allegedly entered the conspirac  
23 in or about November 1970 and he was present on a single  
24 occasion when the proceeds of a narcotics transaction were  
25 allegedly counted.

Now, I don't know how we are going to try this case given those two facts and those two facts alone, your Honor.

THE COURT: I am not going to rule on either one of your motions right now. You will have a ruling by tomorrow afternoon, early.

MR. ELLIS: Thank you, your Honor.

MR. DOWD: Your Honor, Michael Dowd for Frank Russo. In the first instance, your Honor, I think we had an agreement with Mr. Phillips that in respect to the chemical tests he would advise us today as to what tests were made in respect to each analysis, or at least as far as I think I made the request, and I think he said he would furnish that to me with respect to the defendant Russo.

THE COURT: Wait a second. I believe that I indicated at our last meeting that any chemical analyses whatsoever were to be turned over to defendants.

MR. DOWD: Judge, one of the problems is this: what is turned over invariably, if it's a New York City Police Department lab, the examination is a piece of paper that says heroin present. The indictment says that and it's not exactly what would be called a chemical report. Therefore, I think we had agreed, and I just want to make



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2 sure that that is the agreement, since we had no reporter  
3 present on the 20th, that in fact today I will receive,  
4 that being a week prior to the start of the trial, the  
5 names of the tests used to determine that in fact what my  
6 client allegedly had was heroin.

7 THE COURT: All right.

8 Mr. Phillips, could you make that represent-  
9 ation?

10 MR. PHILLIPS: Your Honor, I turned over on  
11 December 20th the chemical reports that I had at that  
12 time, which included both federal and state chemical  
13 reports.

14 I was requested at that time to have work  
15 sheets with respect to those items by one counsel. I  
16 recall it being Ivan Fisher, who represents Mr. Christiano.

17 I have today with me the work sheets relating  
18 to the federal tests that were performed and I am prepared  
19 to turn those work sheets over to counsel. I understand  
20 Mr. Oppenheimer is representing Mr. Fisher today. If he  
21 wishes to make copies of them, that is fine, for Mr. Dowd.

22 MR. DOWD: They have no application to me, your  
23 Honor, because mine were done by the New York City Police  
24 Department Lab.

25 THE COURT: We are getting to the New York Cit

Police Department. Go ahead.

MR. PHILLIPS: With respect to the New York City Police Department lab, I made a request immediately after the pre-trial session on December 20th for the work papers regarding these items. Certain papers were delivered to me last Friday. However, on examination of them, those papers do not relate to the particular seizures involved in this case.

I talked to the sergeant and I am going to see him immediately following this pre-trial conference and I will get those papers and make them available to Mr. Dowd.

I have one other thing with respect to a chemical report. A chemical analysis was made on the 13th day of December, on the 18th day of December, and so the report was not available the last time that we met, that I met with defense counsel at a discovery session. However, I have copies of that report. It's a federal analysis. I am prepared to make those available to counsel today.

THE COURT: All right.

MR. DOWD: I have some more, Judge.

THE COURT: Go ahead.

Basically what I hear, Mr. Dowd, is that Mr. Phillips is trying to get you the work papers that you want.



1 jhd

2 MR. DOWD: Not necessarily. I want the work  
3 papers particularly. I want to know the names of the  
4 tests also.

5 THE COURT: It would be nice to have the work  
6 papers, wouldn't it?

7 MR. DOWD: Yes. Judge, also in respect to the  
8 tapes that I received concerning my client, I would  
9 question the audibility of those tapes. Somebody from my  
10 office picked them up I believe Thursday morning. I  
11 tried to have them reproduced, was advised by the expert  
12 that I hired that this copy was of such poor quality that  
13 if he tried to make a copy from a copy there would be  
14 very little left of it. I have the tapes with me right  
15 now.

16 THE COURT: Mr. Phillips, can you work out some  
17 thing?

18 MR. PHILLIPS: If Mr. Dowd is questioning the  
19 audibility, I already informed him we are not going to  
20 use the tapes at the trial.

21 THE COURT: No, it's not a question of that.  
22 What he is saying is he can't have the copy you gave him  
23 reproduced by his expert.

24 MR. PHILLIPS: Not all the tapes that we have  
25 are completely audible. If they are inaudible, they are

inaudible. We can't make them audible.

THE COURT: I am not suggesting that you can. I am suggesting that you have the original, right, you made a copy from the original, and you asked Mr. Dowd to make a copy from the copy, right?

MR. PHILLIPS: Yes, we did, your Honor.

THE COURT: Is there any possibility that you can make a copy from the original to make available to Mr. Dowd?

MR. PHILLIPS: That is what we made. I understand it's a copy of the original we made available to Mr. Dowd.

THE COURT: Are you demanding the copy from the original back from Mr. Dowd or can he keep it?

MR. DOWD: Could I keep it temporarily?

MR. PHILLIPS: I will let him keep it temporarily, your Honor.

THE COURT: All right.

MR. DOWD: Judge, I just want to bring up the point of audibility at this point. I don't think every tape is inaudible, but a significant portion is.

Finally, Judge, I understand that just prior or some time prior to my entrance Mr. Phillips moved to sever Count 26, I believe, with respect to Frank Russo.



1  
2 THE COURT: Let me check my notes.

3 Count 26, a motion to sever was made and  
4 granted.

5 MR. DOWD, do you represent Mr. Russo?

6 MR. DOWD: I certainly do, Judge.

7 THE COURT: I assume that you consent to the  
8 severance?

9 MR. DOWD: I would certainly think I would.  
10 I would just like to reserve any rights I have until the  
11 conclusion of this conference.

12 THE COURT: Sure.

13 MR. DOWD: Also, Judge, in respect to the  
14 superseding indictment and the overt act number 9, which  
15 corresponds, I think, to Count 16, the bill of particulars  
16 which I received in respect to that count, which refers to  
17 mid-May 1971, in discussions that I have had with my client  
18 concerning the alleged acts, that lack of particularity in  
19 respect to this alleged act, namely, mid-May, without any  
20 time, even as to during the day, places my client, I submit,  
21 in a very intolerable position in respect to an act  
22 allegedly committed two years ago.

23 I would ask that the Court order at this time  
24 that the People, the Prosecution, specify with some greater  
25 degree of specificity the time and the date.

THE COURT: All right. That motion is denied.

I think I am still working down this way. I haven't gotten to the upper balcony yet.

MR. SUNDEN: Your Honor, Gary R. Sunden for the defendant Butch Ware, also known as William Alonzo.

Your Honor, the first thing I want to address myself to is the fact that I am assigned. I asked the Court at the original conference we had regarding daily copy and you stated you would null that one over. I wonder what your position on that has become.

As an assigned counsel I take the position that were I retained I would advise my client definitely to purchase daily copy. I feel it's an invaluable tool. I am requesting it on behalf of my client.

THE COURT: It's a great aid. I will not deny it.

Is anybody here going to purchase daily copy?

(Continued on page 40.)



8

1  
2 MR. LOPEZ: I imagine, your Honor, that there  
3 will be attorneys that will join together in purchasing  
4 copy, your Honor. I have instructions from my client to  
5 purchase Daily Copy, to make whatever arrangements I can  
6 with other counsel.

7 THE COURT: All right. Under the circum-  
8 stances, I am sure either you can share the copy which is  
9 purchased or I will make arrangements for a copy or copies  
10 to be able to assigned counsel.

11 MR. SUNDEN: Do I understand then that somehow  
12 through the court auspices I will receive a copy?

13 THE COURT: I am not saying that you will receive  
14 it. There are a number of assigned counsel here. I don't  
15 want to end up buying 18 copies of the same transcript.  
16 I will arrange to have it available for you, yes. When  
17 I say available I mean available.

18 How many assigned counsel are there, eight or  
19 ten? Most likely I will end up buying three or four  
20 copies and in that way we will take care of it. I won't  
21 buy it, by the way. I am broke already.

22 MR. SUNDEN: Another point I would like to  
23 address myself to is the point mentioned by I believe Mr.  
24 Ellis over here as to the conspiracy count.

25 My client, Mr. Ware, is mentioned only in the

1  
2 conspiracy count, and I believe I joined in a motion to  
3 dismiss at the original conference, and as Mr. Ellis  
4 stated, that motion was held in abeyance or subject to  
5 renewal pending particularization. In the case of my  
6 client, that particularization resulted in a kind of  
7 negative particularization. In the first indictment  
8 he was named in one overt act. In the superseding indict-  
9 ment the same overt act is referred to and my client is  
10 excluded from mentioning that. So I know less now in  
11 some ways than I did without the particularization.

12 So my client is in a position of having to  
13 defend himself knowing actually less about the case than  
14 before. It's a tenuous position in which to mount a  
15 defense. So I renew my application to dismiss as to  
16 my client the sole count in which he is named; the con-  
17 spiracy count.

18 THE COURT: That is Butch Ware.

19 MR. SUNDEN: Yes.

20 THE COURT: I have to reserve on that, counsel.

21 MR. SUNDEN: The third thing I wish to mention --  
22 I mentioned this also at the first conference -- my client  
23 is held in Rikers Island because he has a pending State Court  
24 charge. As a practical matter I mention that it's an  
25



1  
2 incredibly difficult thing for an attorney to visit Rikers  
3 Island and attempt to spend time to interview his client.  
4 I have done so. However, the trip takes the better part  
5 of an hour and the way Rikers Island works it takes greater  
6 than an hour to simply await the production of the client  
7 and take the bus from one facility to another there within  
8 the institution once you have arrived there. It's a rotten  
9 situation.

10 So I would ask that Mr. Phillips or the government  
11 now take this man and put him at West Street, where he  
12 would be available, or else bring him to the courthouse  
13 every day this week so that I can have some sort of more  
14 reasonable opportunity to further confer with my client.  
15 Frankly, as a practical matter --

16 THE COURT: I understand your problem. Rikers  
17 Island is a hole. There is no two ways about it. But  
18 you have to understand the problem of the government also.  
19 West Street is jammed up to the gunwales and to transport a  
20 prisoner back and forth on a daily basis from Rikers  
21 Island is a little more than I can request them to do.

22 I will suggest this, and I am sure that Mr.  
23 Phillips will agree. Along about Wednesday or Thursday  
24 of this week, in view of the fact that he is going to be  
25 tried next week and will have to be available anyway,

I am sure that he will get up a writ to have him moved from Rikers Island to West Street, although I must admit neither place is a bargain.

MR. SUNDEN: From the standpoint of counsel visiting a client --

THE COURT: You get over to West Street on Wednesday, Thursday and Friday you will see him there.

You agree, don't you, Mr. Phillips?

MR. PHILLIPS: Yes. In fact, we will prepare a writ that will produce Mr. Ware in the courthouse on Thursday and we will keep him then in West Street. I believe that is what the marshals do now. I may be wrong. They may return him to Rikers Island before bringing him to court, but I would think they would keep him in West Street.

THE COURT: I would hope they would, but you get up the writ to have him here.

MR. SUNDEN: Do I understand from that that as the trial is progressing he is, during the duration of the trial, going to be held at West Street?

THE COURT: I would hope so, yes.

MR. ROCHMAN: He won't be here at 10 o'clock unless he is, Judge.

THE COURT: I am well aware of that. That is why I said I hope so.



1  
2 MR. PANZER: Edward Panzer for Hattie Ware.  
3 With respect to the 3500 material, will we receive that  
4 a day in advance?

5 THE COURT: Mr. Phillips?

6 MR. PHILLIPS: 3500 material?

7 THE COURT: Yes, he wants to know if he will get  
8 it a day in advance.

9 MR. PHILLIPS: Your Honor directed that the  
10 government turn it over the night before and we intend to  
11 abide by that direction.

12 THE COURT: That is my recollection.

13 MR. PANZER: I have one other point. Your  
14 Honor, there were some statements made by defendant which  
15 are post arrest and I do not know whether the government  
16 intends to offer any of those statements, whether we will  
17 require hearings with respect to those statements. Specific  
18 ly, I am interested in my client, Hattie Ware. I would  
19 like to know at this time if they intend to offer any  
20 post arrest statement made by her.

21 THE COURT: Was there a post arrest statement  
22 made by Hattie Ware?

23 MR. PHILLIPS: Yes, there was, your Honor.

24 THE COURT: Was it turned over to counsel?

25 MR. PHILLIPS: Yes, it was.





1  
2 THE COURT: Is it going to be offered at trial?

3 MR. PHILLIPS: At this time it's not the govern  
4 ment's intention to offer it. Should we decide to offer  
5 it we would be prepared to have a hearing outside the  
6 presence of the jury, which should not take up too much  
7 time.

8 THE COURT: All right.

9 MR. PANZER: Thank you, your Honor.

10 THE COURT: Mr. Stotsenburg, hold on. I believe  
11 in running a humane courtroom. You gentlemen have been  
12 sitting here for an hour and 22 minutes, at least. Maybe  
13 somebody would like to have a smoke. Be back here promptly  
14 at 11.30.

15 (Recess.)  
16  
17  
18  
19  
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21  
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23  
24  
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1  
2 MR. OPPENHEIMER: Your Honor, as a procedural  
3 matter, when we were discussing the electronic surveillance  
4 Mr. Phillips had mentioned that I was arranging to have  
5 copies made.

6 I want to state that I only arranged to have  
7 five copies made for those counsel that had contacted me  
8 either before or as a result of talking to Mr. Phillips and  
9 I am not in a position to make copies of those for all counsel  
10 in the case.

11 The originals will be back to Mr. Phillips today

12 THE COURT: All right.

13 MR. KING: If your Honor please, my question  
14 will be a short one. I want to know if and when I can  
15 have an opportunity for a pretrial examination of one of  
16 the co-conspirators, Harry Pannirello.

17 THE COURT: Is he one of the people who you are  
18 bringing down?

19 MR. PHILLIPS: Two o'clock Thursday, your  
20 Honor.

21 THE COURT: Two o'clock on Thursday, sir, this  
22 Thursday.

23 MR. KING: Will your Honor bear with me a  
24 moment?

25 THE COURT: Sure.



1  
2 MR. KING: That is the 20th, Mr. Phillips?

3 MR. PHILLIPS: Yes.

4 MR. KING: Right here?

5 THE COURT: No. It will be in the U. S. Attorney  
6 office.

7 MR. KING: Thank you very much.

8 THE COURT: That is also my 41st birthday.

9 Mr. Stotsenburg.

10 MR. STOTSENBURG: It was my understanding  
11 we should not repeat motions previously made, such as to  
12 dismiss the indictment, but I want to draw your Honor's  
13 attention to the fact in the superseding indictment there is  
14 just no act or even mention, than the fact that it is  
15 mentioned in the caption, of my client, Mary Jane Salvani,  
16 and there is no mention in the particulars except that she  
17 entered in the conspiracy in the spring of 1973.

18 I haven't examined your Honor's orders that  
19 have come down as of say Friday from your Honor's chambers,  
20 but it seems to me it is legitimate for me to draw your  
21 Honor's attention to the fact that I haven't got anything  
22 to defend on.

23 THE COURT: I understand your problem. Your  
24 statement as to the motions, if one counsel makes a motion  
25

1 it applies to everybody to whom it could have been of  
2 benefit.  
3

4 MR. STOTSENBERG: Thank you, sir.

5 MR. ROSENBERG: Your Honor, Theodore Rosenberg.  
6 I represent Pugliese. Your Honor, I am wondering if the  
7 Court will consider one of the attorneys to voir dire the  
8 prospective jurors. I know what the normal course of  
9 events is.

10 This being a major narcotics case, I really  
11 feel we get to the point where because the Court instructs  
12 the jurors, the prospective jurors that they are not to feel  
13 any prejudice one way or another, I don't really feel  
14 that that is really the truth of the matter, and perhaps with  
15 a voir dire by one of the attorneys we can perhaps ferret  
16 out whether or not realistically there are other prejudices  
17 which perhaps they may, when they are looking at the Court,  
18 say they have no prejudices, but perhaps we can really delve  
19 into it.

20 In the interest of substantial justice, your  
21 Honor, I can't see that there is going to be any prejudice  
22 with respect to the Court or the Government and I think  
23 that thereby we can really get a fair trial.

24 THE COURT: Mr. Lopez, you will give me any  
25 questions which you feel or any other counsel feel should



1  
2 be asked of any of the jurors. I will not permit a voir  
3 dire examination by counsel. Unfortunately, the times  
4 where I have seen it, what it ends up being is a double  
5 opening. Any questions you want asked I will ask.

6  
7 MR. OPPENHEIMER: Your Honor, should all re-  
8 quests of individual counsel be given to Mr. Lopez or  
9 directly to the Court?

10 THE COURT: Directly to Mr. Lopez. As I  
11 indicated, there will be no side bar conferences and the  
12 only guy to come into the robing room is Mr. Lopez, unless  
13 there is a personal problem. Just ask Mr. Lopez, "I have  
14 a personal problem, ask the Judge if he will see me," and  
15 the answer is yes, I will see you on a personal problem at  
16 any time.

17 MR. SUNDEN: Judge, one further problem that  
18 anticipate might happen. Regarding in a conspiracy case  
19 hearsay testimony that is offered, which may come up, and  
20 some counsel may feel is subject to connection of proof of  
21 the establishment of the conspiracy in the first instance,  
22 in the case of a client like the one I represent, who is  
23 not named in a substantive count or any overt acts, I  
24 would anticipate there might be a lot of hearsay testimony  
25 and on behalf of my client I would feel compelled to be  
continuously rising up and making objections.

I am wondering if we might have either at the outset of the trial or right here a standing objection to such testimony, which would avoid the necessity of my bobbing up and down and making these continual objections.

THE COURT: Let me ask this: Does any defense counsel object to a standing objection on subject to connection testimony?

MR. SIEGAL: I object to it, if your Honor please.

THE COURT: You do?

MR. SIEGAL: Yes, sir.

MR. OPPENHEIMER: Your Honor, I would assume with respect to any standing objection that proper instructions at the time, during the course of the trial, would be given with respect to any Fantuzzi-type objection.

THE COURT: First of all, instructions will be given. I hope that they will be proper.

Unfortunately, I am fearful therefor, Mr. Sunden, that you must stand up and say "Objection, not binding," or whatever. But I don't want a speech. All you have to do is state "Objection," and leave it there.

MR. SUNDEN: Very good.

THE COURT: Now we have the problems. First



of all, does everybody know what is going on, what, Mr. Lopez, you are to do this afternoon? There are a couple of motions where people wanted some time before they either renewed their motion or made a new motion. Those matters will be taken up this afternoon at 3:30. Between now and 3:30 I hate to waste the time.

Mr. Phillips, on the motion made by Mr. Herbert Siegal, how long would it take for you to be ready?

MR. PHILLIPS: Your Honor, I spoke to Mr. Siegal during the recess. I told Mr. Siegal that it is not the present intention of the Government to introduce any post indictment on arrest statements of Mr. Tranunti in the course of the Government's direct case. Should we change our position with respect to that we will notify Mr. Siegal before we put any agent or any witness on in front of the jury, so that Mr. Siegal may make the appropriate motion and we can, as I indicated with respect to Mr. Sunden's claim, have a hearing outside the presence of the jury, which should not be lengthy.

MR. SIEGAL: That statement of Mr. Phillips is acceptable to me.

THE COURT: All right. You make life easy for me.

MR. SIEGAL: Yes, sir.

1  
2 THE COURT: In connection with the motion  
3 made by Mr. Lopez.

4 MR. PHILLIPS: Your Honor, it is the Govern-  
5 ment's position that we will consent to a hearing in this  
6 matter. We would be prepared any time from tomorrow morning  
7 on during this week to have a hearing, an evidentiary hear-  
8 ing in connection with the suppression motion made by Mr.  
9 Lopez on behalf of Mr. DiNapoli.

10 THE COURT: Are we really going to have  
11 \$1,100,000 flying around the courtroom?

12 MR. LOPEZ: A photograph.

13 MR. PHILLIPS: There will not be the money it-  
14 self, your Honor. At most, there will be a photograph.

15 MR. OPPENHEIMER: Your Honor, inasmuch as  
16 Mr. Lopez' motion relates to evidence to be offered in  
17 the course of the conspiracy count, the defendant Inglese  
18 would join in that motion.

19 THE COURT: Everybody is in on all of these  
20 motions.

21 MR. LOPEZ: Your Honor, just one question with  
22 regard to the witnesses on the motion to suppress regarding  
23 the money. May I learn from Mr. Phillips which witnesses  
24 he intends to rely on, so that in the event I have to get  
25 other witnesses I will be in a position to do so?



1  
2  
3 MR. PHILLIPS: We intend to rely on witnesses  
4 George Reilly and Peter Palatroni.

5 MR. LOPEZ: So that I have to get the two local  
6 police officers? Can I ask Mr. Phillips if he would ask  
7 them to come for the hearing or should I go out searching  
8 them?

9 THE COURT: You see, this is one of my problems.  
10 I don't know anything about two local police officers or  
11 even who these people are.

12 MR. LOPEZ: The arresting officer according to  
13 the Magistrate's complaint in this matter on the seizure  
14 of the money was a Detective John Spertes, a local detective.  
15 He is still a detective.

16 MR. PHILLIPS: May I have a moment with  
17 Mr. Lopez? Perhaps we can work this out without extended  
18 discussion.

19 THE COURT: Sure. That is beautiful.

20 (Pause.)

21 MR. LOPEZ: All right, that is settled, your  
22 Honor.

23 THE COURT: How long is this motion going to take  
24 the hearing?

25 MR. PHILLIPS: I would say it would take a

1 morning or an afternoon. The Government's evidence would  
2 not be that long, but if the defense intends to put any on  
3 I would put aside at least a morning or an afternoon. I  
4 don't think more than that.  
5

6 MR. LOPEZ: Your Honor, to be more specific,  
7 there are going to be four witnesses apparently that are  
8 either Federal officers or local officers and at the date  
9 scheduled for that hearing I would request that Joseph  
10 DiNapoli be produced -- he is at West Street, naturally --  
11 and of course Vincent Papa, who is named as a co-conspirator,  
12 not as a defendant. He is also located at West Street. On  
13 the date and time set for the hearing I would also ask that  
14 he be produced, since he was present at the time of the  
15 seizure.  
16

17 MR. PHILLIPS: We will produce them, your  
18 Honor.  
19

20 THE COURT: All right.

21 MR. LOPEZ: Thank you, your Honor.

22 THE COURT: That sounds like a full day.

23 On the Springer motion, I understand that it is  
24 the Government's position that no hearing is required.  
25

MR. PHILLIPS: That is correct, your Honor.

THE COURT: Unfortunately, I did not get this  
until this morning, so I don't know.



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MR. PHILLIPS: We are prepared to argue the matter. Mr. Fortuin will handle it, your Honor.

THE COURT: I prefer to read the papers and read the cases rather than to hear argument. It is not going to add anything one way or the other.

MR. SIEGAL: Your Honor, Martin Siegal. Your Honor, today I did receive a copy of the memorandum and accompanying affidavit of Mr. Fortuin. I would ask an opportunity to submit an opposing memorandum of law on our points.

THE COURT: Sure. How long would you take?

MR. SIEGAL: We would be able to have the memorandum to you by Wednesday, if that is acceptable to the Court.

THE COURT: Look, don't go to the extent of a very formal memorandum. It is not necessary. If you would like to you can put it in letter form, just say "Judge, take a look at this case, it stands for so and so, and we feel that on the basis of that this ought to follow."

MR. SIEGAL: Fine.

THE COURT: They are very nice to have, the formal memoranda, but I recognize, (1), they are a lot of work, and (2), they take a lot of time.

1  
2 MR. SIEGAL: Fine.

3 THE COURT: Mr. Dowd.

4 MR. DOWD: We still have to resolve I think the  
5 question of the statements made by Stacci, Barnaba and  
6 Panarillo. Five copies have been made and it seems to me  
7 that would not be enough, so more copies would have to be  
8 made.

9 Can we just work that out now?

10 MR. OPPENHEIMER: The service who is making  
11 the copies has informed me that I will have the originals  
12 that Mr. Phillips gave to me back today. I had planned to  
13 return those to Mr. Phillips' office. Frankly, I would not  
14 like to have our time taken up as a clearing house for the  
15 electronic surveillance.

16 THE COURT: I don't blame you.

17 MR. OPPENHEIMER: So they will be returned to  
18 Mr. Phillips' office as soon as I have them.

19 THE COURT: How long does it take to make the  
20 reproduction?

21 MR. OPPENHEIMER: The tapes were given to me over  
22 the course of two days. The first set was turned over late  
23 on Thursday, the next mid-Friday. The copying service worked  
24 a considerable portion of Friday night and I understand all  
25



1  
2 day Saturday. They are working today as well. I should  
3 get some copies today and the remainder tomorrow.

4 I should say I don't know if the amount of  
5 copying time is a reflection of the length of the tapes.  
6 I am not trying to imply that.

7 THE COURT: I am half tempted to take them home  
8 and do them myself.

9 MR. DOWD: It is all right with me, Judge.

10 THE COURT: No, no. No way, Mr. Dowd. Pick  
11 them up from Mr. Phillips today.

12 MR. OPPENHEIMER: Your Honor, without wishing  
13 to belabor the electronic surveillance point, I have a  
14 procedural comment.

15 Mr. Phillips has told me that he intends to  
16 speak today to the agents to man the plant for the tap  
17 in the Capra case. After he has spoken with them he intends  
18 to relay to me the agents' statements with respect to the  
19 extent of overhearings as to the defendant Inglese.

20 Once we know that it would be our intention  
21 then to go forward and make a formal motion on paper. As  
22 I say, we expect that motion to be fairly voluminous  
23 and possibly any hearing that would result therefrom would  
24 be also as well.  
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1 In light of that, does your Honor have any  
2 desires or instructions with respect to proceeding with the  
3 matter of the overhearing?  
4

5 THE COURT: Can you have your motion papers in  
6 here on Wednesday?

7 MR. OPPENHEIMER: We will certainly try.

8 Let's say I am informed by Mr. Phillips that  
9 is extensive overhearing and that there are more pages of  
10 transcript to come other than what has been turned over to  
11 me which number may be a dozen pages or so. We would  
12 want to append probably those pages in support of our right  
13 a hearing.

14 However, Mr. Phillips appears to concede that  
15 if there was extensive overhearing -- I don't mean to  
16 misquote him -- he would concede to such a hearing. Certainly  
17 we are not bound by the Government's representations as  
18 to the fruits of those overhearings that they may have gleaned

19 THE COURT: I am not saying you are. As to  
20 appending, why don't you deem it appended. When it comes  
21 in we will mark it Court Exhibit Number 1, so that if you  
22 decide to go to the Court of Appeals they will have the  
23 benefit of seeing it also.

24 MR. OPPENHEIMER: Thank you.

25 THE COURT: I am sorry. I have been notified

1  
2 by the clerk that it is Court Exhibit 2, since we have  
3 Court Exhibit 1 already.

4 MR. GALLINA: Insofar as your Honor has been  
5 concerned with scheduling, I want to bring to your Honor's  
6 attention the fact that Mr. Hoffman, who is an attorney  
7 representing Mr. DelVecchio, is presently engaged and started  
8 a trial in the Federal District Court in Cleveland today.  
9 He was ordered to be out there. I understand that trial will  
10 take approximately two weeks.

11 THE COURT: This trial was set for pretrial  
12 on the 11th and trial on the 14th. Noboday raised objection  
13 until now.

14 MR. GALLINA: I am sorry, your Honor. I did  
15 personally raise an objection. I did bring it to the attention  
16 of your clerk soon after our first conference. I believe  
17 it was about a week, a week and a half after our first con-  
18 ference. I pointed out that I was scheduled to start a  
19 trial on the 14th of January before Judge MacMahon in the  
20 District Court of Pittsburgh in a 17-defendant case, a case  
21 involving the defendant Zack Robinson, and we also indicated  
22 at that time that we had the case of U.S. vs. Dinizio in  
23 Cleveland for the same period of time.

24 THE COURT: Let me review it. I believe I made  
25 a ruling the last time around on this. Let me review it.



1  
2 Come back here at 3:30 this afternoon.

3 MR. STOTSENBURG: I don't want to be repeti-  
4 tive, your Honor, but am I correct that other assigned  
5 counsel will be able to share a copy of the tapes of Frank  
6 Stacci? I wasn't sure whether I slipped on that or whether  
7 it was just as regards testimony.

8 THE COURT: I assume that the defense counsel  
9 are going to cooperate. I assume particularly that assigned  
10 defense counsel are going to cooperate. That is the kind of  
11 thing that I don't need to rule on.

12 MR. STOTSENBURG: Yes, your Honor.

13 THE COURT: All right. Those who want to come  
14 back, I will see you here at 3:30.

15 MR. ROCHMAN: I had indicated when I rose the  
16 first time that I would reserve until the end of this  
17 conference certain discovery motions on behalf of Mr.  
18 Pellegrino. Does your Honor wish to hear that? I prefer  
19 if it is convenient to your Honor's schedule, to be heard  
20 now rather than at 3:30.

21 THE COURT: Wait just a second.

22 MR. PHILLIPS: Your Honor, with respect to the  
23 electronic taping of Mr. Stacci with the undercover agent,  
24 what I referred to before, I didn't see who just stood up,  
25

1  
2 but I heard them say would this be made available to counsel.  
3 now. I have given it to one counsel. As I have indicated,  
4 Mr. Oppenheimer has made copies of it. I have not got  
5 18 copies to be giving out to each counsel.

6 THE COURT: I am not suggesting that you should.

7 My former ruling was that you get it, make a copy  
8 of it, and pay for the copying of it. Those people who are  
9 under CJA, I assume it is an expense of running the trial.

10 I am not asking you to make 18 copies and spread  
11 them around.

12 MR. PHILLIPS: I had hoped and would request  
13 of the Court to have counsel designate somebody to come to  
14 pick the tapes up, having in mind how many copies he wants  
15 to make. I will give it to him and he will make copies.

16 THE COURT: Mr. Dowd, you are it.

17 MR. PHILLIPS: There is one other thing I have,  
18 your Honor, and that is on November 16, on Page 19 of the  
19 pretrial conference, your Honor stated with respect to  
20 the aliases of the defendants that there would be no reference  
21 made to any aliases unless the Government could convince  
22 you at the pretrial conferences before trial that it is  
23 absolutely necessary and you indicated that you wanted the  
24 words "absolutely necessary" underlined.  
25



1  
2 It is the Government's position that it is  
3 absolutely necessary.

4 THE COURT: Butch? The motion was made in  
5 connection with the alias Butch.

6 MR. PHILLIPS: I assumed that the motion was  
7 directed or your Honor's remarks were directed as to all  
8 of the aliases.

9 THE COURT: I would prefer all of the aliases  
10 to be out.

11 MR. PHILLIPS: It is the Government's position  
12 that the Government witnesses who will be testifying certain  
13 during the time that they knew the defendants and about  
14 which they will be testifying only knew the defendants by  
15 certain aliases, infact, in some instances had no idea what  
16 their last names were, in some instances did not know what  
17 their first names were.

18 It is therefore essential that there be referen  
19 made to aliases in the course of the Government's case.

20 THE COURT: Oh, in the course of the case.

21 MR. PHILLIPS: Yes.

22 THE COURT: That is not what I was talking about  
23 at all.

24 MR. PHILLIPS: I didn't understand. If your  
25 Honor is referring to the indictment, it is the Government's

position that in order that the jury can understand which defendants are being referred to during the course of their deliberations, which will probably be the only time that they might ask for a copy of the indictment, it would be the Government's position that the aliases should be included at that time in the indictment.

THE COURT: Look, if you ask a witness "What did he say to you and what did you say to him," if he uses the name Butch instead of a particular given name, I expect him to use the name Butch in his testimony.

MR. PHILLIPS: It goes somewhat further than that, your Honor.

THE COURT: When we get down to the jury getting a copy of the indictment at the end of the trial, I will worry about it then .

The one thing I don't want is an opening statement which says "So and so alias so and so, Louis Inglese also known as The Whale."

MR. OPPENHEIMER: Your Honor, in conjunction with that --

THE COURT: Maybe that is something that they call him behind his back. I don't know.

MR. PHILLIPS: I would point out that particular



aliases is not in the superseding indictment. It was in the original indictment.

THE COURT: I am looking at the transcript.

MR. PHILLIPS: Yes, I see it is in there.

THE COURT: That is the kind of thing I want to avoid. What the jury sees when it gets the indictment at the end of the case we will worry about at the end of the case.

MR. PHILLIPS: All right.

MR. OPPENHEIMER: In conjunction with this, rather than the standard what we consider to be highly prejudicial effect of these aliases being given to the jury, as to some of the defendants there is a related objection that relates to the pretrial publicity that we were talking about before. In the article that I will supply to your Honor our client's nickname is plastered in ten point cap, Gigi, on column headings all over New York Magazine, and I would hope that in the voir dire that the Court intended there would be a special emphasis directed specifically at the alias.

THE COURT: If you want it directed at an alias --

MR. OPPENHEIMER: Your Honor understands the problem that I am alluding to.

THE COURT: I will try and cover it. But I do

want it directed at an alias. Let's see how I do it and then see if you object.

MR. OPPENHEIMER: All right.

MR. ROCHMAN: Do I understand your Honor directed that the Government in its opening statement not refer to any defendant as someone also known as or someone who has an alias? Is that your Honor's ruling?

THE COURT: That is what I tried to say. I tried to make it in Mother Goose language.

MR. PHILLIPS: Your Honor, may I just be heard on that for a minute. If the Government is going to set forth what it intends to prove it is going to be difficult for it to do it unless in the opening statement it can state that the witnesses are going to testify about certain transactions that they had with say Finnegan. Now, the witnesses who dealt with Finnegan know him as Finnegan, not as Danato Christiano.

For the Government to be restricted to standing up in its opening and only referring to Danato Christiano, the jury is not going to understand what the witness is then talking about when they start referring to the person as Finnegan.

THE COURT: Mr. Phillips, I am relatively certain that you can construct an opening statement without



1  
2 using the words "alias" or "also known as."

3 MR. PHILLIPS: That is no problem.

4 THE COURT: If you are going to say "You will  
5 also hear testimony about Donato Christaino and you will  
6 hear testimony from witnesses who used to call him Finnegan  
7 I can't get upset about that.

8 MR. PHILLIPS: All right.

9 THE COURT: The thing I am trying to avoid  
10 getting across to the jury that they have aliases. You  
11 understand?

12 MR. PHILLIPS: Yes, sir.

13 THE COURT: You have one motion left, right?

14 MR. ROCHMAN: Yes, sir.

15 THE COURT: It will apply to everybody, but  
16 my question is does everybody want to stay around.

17 MR. KING: Until when, Judge?

18 THE COURT: At 3:30 those who want to make other  
19 motions can be back here. I am talking about this one motion  
20 that he wants to make now for his personal reasons and not  
21 come back at 3:30. I will hear him now.

22 MR. GALLINA: Your Honor, I would also like  
23 to have a conference with your Honor with the U. S. Attorney  
24 concerning the disposition of one of the cases.  
25

1 THE COURT: All right. Let's do it now.

2  
3 MR. PHILLIPS, do you object? Mr. Gallina  
4 wants to have a conference with you and he would like me  
5 to be along. Do you object?

6 MR. PHILLIPS: No, no.

7 THE COURT: All right. In view of that fact  
8 you are going to sit here, I hope, for a couple of minutes.  
9 I will be back out.

10 Everybody else, have a pleasant week.

11 MR. PHILLIPS: Your Honor did not set a time  
12 and date for the suppression hearing in connection with  
13 the DiNapoli motion.

14 THE COURT: Wednesday morning, ten o'clock,  
15 right here.

16 MR. SCHWARTZ: Your Honor, Harold Schwartz.  
17 The rest of us are excused, I take it, until --

18 THE COURT: Until 3:30 if you want to come back  
19 and make some more motions.

20 MR. SCHWARTZ: Otherwise Monday, because I am  
21 on trial in Supreme Court.

22 (Recess.)

23 (In open court.)

24 MR. ROCHMAN: Your Honor, I have to begin  
25 by apologizing. With my usual efficiency, I have brought



the wrong folder to court. But I remember what it was that I had made notes about.

Your Honor, with respect to Mr. Pellegrino, my first application would be that the Government be directed by your Honor to put in writing and to give counsel prior to trial a statement with respect to all witnesses who will testify on behalf of the Government and to include in that statement any promises, deals, arrangements involving lenient favored treatment at a prison, possible opportunity for early parole, work release. I am just listing some of the possibilities. I don't mean to be all-inclusive.

THE COURT: Let's just say et cetera.

MR. ROCHMAN: I rely, your Honor, for that request -- and I will amplify it in a moment -- on the case of United States vs. Giglio, decided by the United States Supreme Court. It is at 405 U.S. if your Honor needs it, I will be happy to give you the citation.

THE COURT: I will find it from there.

MR. ROCHMAN: I respectfully suggest, your Honor, in United States vs. Soldan, et al, Judge Bauman in this District granted my application for the same material in advance of trial. I don't recall whether the Government contested the application.

What was done in that case -- it was tried

here in September and October -- was that the Government came us in writing the kind of statement that I am talking about and I think Judge Bauman directed it be done approximately two weeks prior to trial.

In addition, it would include other cases in which those witnesses had testified or it is contemplated they will testify on behalf of the Government not only in this District but in any proceeding known to the Government, and by the Government I mean to include not only Federal but State and local as well.

I think that is as broad as I could make it.

THE COURT: It is pretty broad.

MR. ROCHMAN: Your Honor, I would also ask that your Honor direct that the Government furnish to counsel the statements of co-conspirators allegedly made during the pendency of the conspiracy, and I rely, your Honor, on a case decided recently in the Eastern District by Judge Weinstein, United States vs. Porcevault.

I believe, your Honor, that that matter is now on appeal to the Second Circuit, has been argued. To the best of my knowledge, no decision has been reached. However, in that case Judge Weinstein granted counsel's application. It was a conspiracy case. I think it was a stock fraud



1  
2 conspiracy. I am not sure. He granted counsel's applica-  
3 tion for pretrial discovery of the kinds of statements that  
4 I have described.

5 I would also ask your Honor to direct the  
6 Government to furnish counsel a list of all Government wit-  
7 nesses who will testify at the trial. My application there  
8 is predicated on the language of the Federal rules, which  
9 allow the Court to do anything not otherwise inconsistent with  
10 these rules. I think there is a very, very recent  
11 Ninth Circuit case -- I apologize profusely, sir, that I did  
12 not bring the correct file, but I can have it for you this  
13 afternoon -- in which the Ninth Circuit indicated that it  
14 thought it had the inherent power to do that and indicated  
15 pending a hearing to determine whether or not there was a  
16 real necessity that such pretrial disclosure be made that it  
17 had the power to do such and if it thought it was a real  
18 necessity it would so order.

19 My basic problem in this case is really a  
20 repetition of what I think Mr. Ellis and some other gentlemen  
21 made. Mr. Pellegrino, who I am assigned to represent, is  
22 named only in the conspiracy count. He denies to me any  
23 involvement of any kind in this case. The Government in  
24 its bill of particulars, in indicating when a particular  
25 defendant is alleged to have joined the conspiracy, for the

most of the defendants it says either October 1972 or spring '73.

Mr. Pellegrino is the only person where it just simply says 1971. That is all. He is not named in any of the overt acts. In my reading of the previous indictment I don't think his name appears in any of the overt acts.

I simply have no way of knowing what it is that Mr. Pellegrino is alleged to have done or said so that I can adequately prepare to defend him on the one and only count, the conspiracy count, in which he is named in this case.

My last request -- I hope this is a simple one -- my client has informed me that he has a very ancient, in my view, very ancient 1945 arrest which resulted in a dismissal. I would like to have the Government let me look at any FBI records or anything like that so I can determine that he in fact has no previous criminal record.

THE COURT: You mean a rap sheet?

MR. ROCHMAN: Yes, sir.

THE COURT: Mr. Fortuin, do you have a rap sheet on Mr. Pellegrino?

MR. FORTUIN: I don't have it with me, but I will certainly supply it if we have that.

MR. ROCHMAN: I just inform the Court if my



client informed me correctly that I would have a problem should he wish to testify.

THE COURT: All right. Mr. Fortuin, you have no objection to the rap sheet at all?

MR. FORTUIN: No, none.

THE COURT: It wouldn't matter if you did anyway.

MR. FORTUIN: Is that all the motions?

MR. ROCHMAN: It is.

MR. FORTUIN: Just briefly, with respect to the Percevault motion, counsel has correctly stated what that case holds. However, it is on appeal and Mr. Phillips told me that no Judge in this courthouse has followed it.

THE COURT: There always has to be a first one.

MR. FORTUIN: With respect to the information that has been requested concerning the witnesses, there are several problems there. One is merely getting it together. The other is I don't think the Government is required in any case to divulge who its witnesses are.

In this case it would be a particular problem, (1), because of the safety of the witnesses themselves. Some are in Federal protective custody but others are not. We are tremendously concerned for the safety of the witnesses if their names are divulged. The same would be true about an

1 inducements that have been made to the witnesses. Arrange-  
2 ments have been made, for example, that a witness' identity  
3 may be changed after his testimony.  
4

5 I think these are matters that can all properly  
6 be addressed in cross-examination but should not be divulged  
7 by the Government at this time.

8 THE COURT: I would suggest, and it is strictly  
9 a suggestion, that that is not a matter to be taken up in  
10 cross-examination, but should be disclosed in direct examina-  
11 tion. I said it is merely a suggestion.

12 As to the cases, unfortunately, I have a good  
13 memory, but it is not photographic. I will have to read  
14 Giglio, find out from Judge Bauman what the Soldano case  
15 held, I will have to read the Percevault thing. If it is  
16 on appeal I would assume that the papers are in this court-  
17 house and that way I can get it.

18 MR. ROCHMAN: It is reported in the Criminal  
19 Law Reporter and I will call your Honor's clerk as soon as  
20 I get back to my office and give her the exact citation.

21 THE COURT: All right. Call Miss Cardin,  
22 give her that, and also the Ninth Circuit case.

23 MR. ROCHMAN: That is also in the Criminal Law  
24 Reporter and I will do that as soon as I get back.  
25



1 jhb  
2 THE COURT: All right. I gather that finishes  
3 it.

4 MR. DOWD: We have a practical problem, Judge.  
5 In respect to the copying of the tapes, I could have the  
6 tapes that I will receive from Mr. Oppenheimer, which  
7 he has had five copies made of, and I could have them deliv  
8 to my man this afternoon. My problem is I am going to pay  
9 for my copy. Assigned counsel has indicated they want a  
10 copy.

11 I doubt, quite frankly, whether the man I bring  
12 them to is going to be very interested in waiting two or  
13 three or four months to get paid for making copies of tapes.  
14 That is a practical problem I have. I want to take them  
15 to somebody who knows what he is doing. This mandates the  
16 work for the Queens and the Brooklyn DA's office.

17 THE COURT: How much does a copy of the tapes  
18 cost?

19 MR. DOWD: Reel to reel, if it is that, would  
20 cost approximately \$10, plus the cost of the actual tape.

21 THE COURT: It is about \$15 a reel. While I  
22 recognize the economic burdens which a Federal Judge has to  
23 face, I would hope that you fellows are in a position to  
24 put out the money. I don't know the Criminal Justice Act  
25 backwards and forwards, but it is my belief that that is an

expense which you should be reimbursed for. If it is not I will go to bat for you and make sure you do get it.

MR. DOWD: My client is going to pay for it himself.

THE COURT: I am talking about assigned counsel.

MR. DOWD: My problem is unless they want to advance it --

THE COURT: I would think that there should be no problem with that, \$15.

MR. DOWD: All right.

MR. ROCHMAN: Something just did briefly occur to me. It is very brief. Just in response to what Mr. Fortuin said, your Honor suggested that with respect to information bearing on the credibility of witnesses who are going to testify that it would be appropriate that that matter be disclosed on direct examination. I would assume as a matter of trial strategy the Government is going to disclose it on direct examination. That is not my point.

THE COURT: I understand what your point is.

MR. ROCHMAN: I would like prior to trial to know what it is so if there is any investigation I can do so and I can properly cross-examine. If I hear it on direct for the first time that is not going to give me that opportunity.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580



Secondly, with respect to the voir dire, I have never had the pleasure of trying a case before your Honor. I would assume that your Honor would inquire as to the per background of each juror. If your Honor does not I would request that you do.

In asking for the juror's occupation I would respectfully ask that your Honor ask this in detail so that counsel may have an opportunity to get the kind of job a person has, the spouse's occupation in detail, the occupation of his children, any schooling they have.

THE COURT: Children is going a little bit --

MR. ROCHMAN: I mean assuming that they are grown children.

THE COURT: What you are interested in, if we get a juror whose son is an FBI agent or a narcotics agent, you are not particularly happy about having that juror remain right, or may not be. Don't worry. I will try to bring that out with each and every one of them, any connection whatsoever with law enforcement.

On the background of the particular juror, yes we will get the title of the job. If the title is self-explanatory, I am not going any further. If a woman comes in and says she is a sewing machine operator, you don't care

whether she makes bathing suits or underwear, right?

MR. ROCHMAN: That's right.

THE COURT: That kind of stuff you will get.  
Don't worry about it.

MR. SEGAL: Your Honor, I am Murray Segal and I represent Henry Salley. I was going to return at 3:30 this afternoon because, as I mentioned to your Honor this morning, I met my defendant for the first time this morning.

We are in a situation rather similar to the situation my brother counsel finds himself in in that the defendant is named in the conspiracy, he is named in an overt act, but that overt act even as particularized, in quotation marks, by the Government merely says that he traveled to New York with another defendant and stopped at a Howard Johnson's motor lodge in mid-October of 1972, and that is it.

I submit that does not give me much basis for preparing a defense for somebody who claims, as does my defendant, that he has absolutely no involvement in this entire situation and doesn't even know what happened to him.

Now, under those circumstances it seems to me that at the very least the defendant should be entitled to



1  
2 some greater particularization and I think some of the  
3 relief that was just asked for in connection with this  
4 other defendant applies just as much to my defendant and I  
5 believe to other defendants who are named in the conspirac  
6 count.

7 THE COURT: Mr. Segal, I assure you any motion  
8 that is made I consider for everybody. Everybody who can  
9 benefit by it, if it is granted, it would be granted for  
10 everyone.

11 MR. SEGAL: So I do not think I could add any  
12 thing if I were to reappear at 3:30 and repeat many of the  
13 things that have been brought to the Court's attention.

14 THE COURT: All right. You don't have to be  
15 back. You can now go and make money.

16 Is there anything else that anyone wants to  
17 take up before 3:30?

18 MR. LOPEZ: No. I will be here at 3:30, yo  
19 Honor.

20 MR. WARNER: Your Honor, I made certain agree  
21 ments with Mr. Phillips or Mr. Phillips made certain  
22 agreements with me to provide particular information about  
23 my client's alleged participation.

24 Since he is not here, perhaps I better wait  
25

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2 until 3:30, so that he can discuss it.

3 THE COURT: Maybe you will get the agreements  
4 fulfilled between now and 3:30.

5 MR. WARNER: They haven't been fulfilled until  
6 now.

7 THE COURT: Thank you very much, gentleman.

8 (Adjourned to 3:30 P.M.)  
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AFTERNOON SESSION  
3.30 P.M.

P r e s e n t :

Mr. Phillips,  
Mr. Fortuin,  
Mr. Oppenheimer,  
Mr. Lopez,  
Mr. Warner,  
Mr. Salke.

- - -

(Discussion off the record.)

THE COURT: While we were off the record, Mr. Oppenheimer reminded me that he and Mr. Phillips were to report as to the extent of the surveillance in connection with the Capra case. All right.

MR. OPPENHEIMER: During the recess since this morning's session, I consulted, your Honor, with counsel, with defense counsel, in the Capra case, who informed me that the course of the telephonic surveillance in that case covered a period estimated at some two and a half years, that he listened to most if not all of the tapped material that was provided to him during the course of that case, and he assured me that our client, Mr. Inglese, is "all over it."

That, coupled with the copious orders in that case, and the length of it, particularly, I understand, at least with respect to our client, with an installation

1 bp2

2 in what the government denominated as the Havermeier  
3 installation, is quite extensive.

4 I am not in a position to say that there were  
5 two and a half years of urveillance, on Mr. Ingless,  
6 but certainly he is interspersed throughout that period  
7 of time.

8 I might say, your Honor, that at the time we  
9 filed our motions for discovery and inspection, we requested  
10 all --

11 MR. PHILLIPS: Your Honor, the surveillance  
12 that took place during the Capra investigation was not  
13 two and a half years.

14 To the best of my knowledge, the first inter-  
15 ception occurred in the latter part of 1971 and there were  
16 interceptions or wires that were placed in various tele-  
17 phones that were bugs that were used at various establish-  
18 ments during 1972.

19 I have examined and I have questioned the  
20 individuals involved with manning and overseeing these  
21 interceptions of these wires and I have been informed  
22 that Mr. Ingless appears only on interceptions of two  
23 pay telephones at Ray's Stationery Store.

24 I have taken the transcripts of Mr. Ingless's  
25 conversations on those telephones and I turned them over



1 bp3

2 last week to Mr. Oppenheimer, and I gave a copy of those  
3 Detective Eaton who was the one in charge of those, and  
4 he is checking them against the logs as to whether they  
5 constitute the sum total of all of Mr. Inglesse's over-  
6 hears, and he is to report to me later this afternoon.

7 There was one other overhear of Mr. Inglesse  
8 involving the Havermeyer Club and that conversation, or  
9 a transcript of it, I gave to Mr. Oppenheimer last week.

10 As far as the applications for the warrants  
11 regarding the telephones and the bugs is concerned, and  
12 the extensions therefor, they are extensive and I showed  
13 those to Mr. Oppenheimer in my office last week and asked  
14 him whether he wanted to have copies of them, whether he  
15 wanted to read them, or what, and explained to him what the  
16 situation was with respect to Inglesse, and he indicated all  
17 he wanted was a copy of the one application which con-  
18 tained the one conversation of Inglesse in the Havermeyer  
19 Club, and so I made a copy of that and gave it to him, and  
20 then later last week gave him the transcripts regarding  
21 Ray's Stationery Store overhears of Inglesse's conversations

22 THE COURT: I would think that in an excess of  
23 caution, perhaps, we ought to give to Mr. Oppenheimer the  
24 application for Ray's Stationery Store also.  
25

bp4

MR. PHILLIPS: I will, I will let him look through --

THE COURT: But as of this moment, I gather you have not had your detective who was in charge of these logs complete his investigation, is that right?

MR. PHILLIPS: That is right. He is going to call me at 5 o'clock as to whether he has either completed it or will tell me how far he has gotten to that point with respect to Inglese and will tell me whether what I have given constitutes the entire conversation.

THE COURT: I will tell you, over this past summer I was forced to listen to 250 hours of tape and I hope that we can resolve this without forcing me to listen to two and a half years, or to a year and a half of tapes, or whatever it is. You hear some of the weirdest conversations ever.

MR. PHILLIPS: Mr. Oppenheimer has indicated, and he indicated to the Court this morning, that he contends that there should be a hearing in this matter to determine whether or not the government's evidence in this case, if not directly derived from the wiretaps in the form of us offering conversations of Inglese, is indirectly derived from wiretaps which may be either illegal by virtue of lack of probable cause to get the court order, or for some



bp5

other reason, or were intercepted illegally, that is to say, not properly executed because there was no minimization of the conversations.

Now, as I also indicated this morning, the government is not introducing any conversations of Ingleso, and it is the government's position that the investigation in this case was wholly separate from the investigation involved there.

We have no intention of even using any evidence that was developed as the result of leads obtained from this information.

We would be prepared, and if Mr. Oppenheimer so moves at the conclusion of the trial, to have a hearing to prove our position as I just stated it.

THE COURT: If we are going to have a hearing, we will have to have it on Wednesday. The question is, how long is the suppression hearing going to take? Apparently that will go all day, so that puts us into Thursday, right?

Would both of you be ready by Thursday?

MR. PHILLIPS: It is the government's position that it is not necessary, and it is merely wasting the Court's time and counsel's time to have a hearing before the trial.

1  
2 If there is a trial and Mr. Inglesse is acquitted,  
3 in that event there is no need for a hearing. If there  
4 is a trial and Inglesse is convicted, then we are not  
5 introducing any evidence that we obtained from the wire-  
6 taps, so there is not going to be any question of whether  
7 there was adequate minimization of the telephone conver-  
8 sations that were --

9 THE COURT: All right. I understand.

10 MR. PHILLIPS: What we would be ending up doing  
11 if we had a hearing on Thursday is a complete open and  
12 discovery session.

13 THE COURT: Yes. I understand.

14 MR. OPPENHEIMER: Your Honor, first of all, I  
15 think it is clear, especially in light of U.S. v. Huss,  
16 that we are in no way bound by the government's representa-  
17 tions as to whether or not any of the fruits of the Capra  
18 tap have resulted in the revelations of certain evidence  
19 which has assisted the government in this case, whether  
20 or not they introduce it directly, so insofar as Mr.  
21 Phillips' representations are concerned, I certainly am not  
22 in a position to forego a hearing in light of that.

23 In terms of when such a hearing should be held,  
24 let me say this, your Honor: to make Mr. Inglesse go through  
25 a trial of the length that this one will take, or may take,



1  
2 and through the expense of such a trial, especially con-  
3 sidering his condition now -- I think it is a matter of  
4 record that he does have some health problem notwith-  
5 standing the fact that he is incarcerated -- and also to  
6 have that entire trial thrown out as a result of a vio-  
7 lation of his Fourth Amendment rights, I think, your  
8 Honor, is wholly improper.

9  
10 Furthermore, we are not prepared to concede  
11 that if there is a violation of minimization merely because  
12 the government may prove that the failure to minimize,  
13 or that the tapes are not going to be used in this case,  
14 that the Fourth Amendment violation still does not give him  
15 the right to a dismissal, and I think that there is authority  
16 for the fact that there is some constitutional right or  
17 rights that transcend upon the government's ability to  
18 prosecute, and if there is a failure of minimization to  
19 electronic surveillance spanning over a year's period of  
20 time, there is a substantial constitutional question as to  
21 whether or not the public interest in seeing that a man's  
22 constitutional rights should be vindicated far exceeds  
23 those of the government in seeking a prosecution in this  
24 case.

25  
Therefore, I am not prepared to concede that  
if there was a failure of minimization, I might say the

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2 tap is wrong, that there is a failure, a substantial  
3 possibility that the Second Circuit's decision in United  
4 States v. Eyzum notwithstanding, there is still a very  
5 substantial minimization issue.

6 MR. PHILLIPS: We would even go so far as to  
7 concede that the wiretap involved in Ray's Stationery  
8 Store was not minimized.

9 What Mr. Oppenheimer is advocating is that because  
10 a person is the victim of an illegal search and seizure  
11 under the Fourth Amendment on one occasion, it makes him  
12 immune from committing and being prosecuted for a crime  
13 based on his other activities later on or before.

14 THE COURT: I understand. All right. It is  
15 very late. I have got to do some reading. I will rule  
16 on it tomorrow. Someone will give you a call.

17 MR. OPPENHEIMER: I assume your Honor will make  
18 a ruling, and I assume that that is with respect to our  
19 right to a hearing.

20 THE COURT: Right. That's the best I can do.

21 MR. SALKO: Your Honor, I represent the defendant  
22 Dominick Lessa.

23 With the Court's permission, I have two motions  
24 to make. I have asked Mr. Phillips whether he would consent  
25 to my making them orally and apparently he has acquiesced.



1  
2 The first motion as to the defendant Lessa has  
3 to do with the bill of particulars. The particulars are  
4 of such a nature that they give a broad statement, "During  
5 the month of October," so much so that the defendant Lessa  
6 is, in reality, unable to prepare a defense.

7 I would like to say, without going too far in  
8 giving away the particular defense, that it may well be  
9 that at certain dates the defendant Lessa was not in the  
10 City of New York, and to permit the people, in view of  
11 their lengthy investigation, to allege it in their particular  
12 a very broad concept of practically a month, in effect,  
13 would be to deprive the defendant Lessa of his ability to  
14 prepare a defense. That would be the first motion, that  
15 the particularization should be made more particularized.

16 The second motion is fundamentally a motion to  
17 sever the defendant Lessa upon the following grounds:

18 No. 1, my weighting of the indictment would  
19 indicate that there appears to be multiple conspiracies.  
20 I make out at least three conspiracies, possibly four.

21 If the defendant Dominick Lessa is involved in  
22 either one or possibly two, my weighting would indicate,  
23 at the most, two, but most probably one, the joining of  
24 all of these conspiracies with each other -- and I call  
25 them multiple -- would certainly militate against the

bp10

defendant Lessa's constitutional rights.

In addition, the possibility that there will be proffered into evidence the sum of \$967,000 cash, or whatever it is, is of such a nature that --

THE COURT: It is a million one.

MR. SALKO: It keeps going up.

It is of such a nature, Judge --

Judge, I would say we really do not exist in a vacuum. I think it is literally impossible to believe that that sort of evidence, going in at the trial, would not prejudice somebody, such a defendant as Dominick Lessa.

I think it forecloses the whole defense. It makes, for all practical purposes, a shambles out of any defense. It would not even be an inquest. It would only be half an inquest. That would be the second ground.

The third ground, sir, is because in one of the substantive counts against the defendant Dominick Lessa, he is specifically named as a co-defendant with Thomas Lentini, who allegedly delivered to my client, Mr. Lessa, a substance of -- I think it was -- cocaine, which was alleged.

It is our clear intention, without any hesitation, I state this, to call as a witness in behalf of Mr. Lessa, the co-defendant, Mr. Lentini.



1  
2 Now, I have only found out a few minutes ago  
3 who the attorney for Mr. Lentini is. I don't know whether  
4 that attorney will take the position that he is going to  
5 have Mr. Lentini testify or whether he is going to have  
6 his client, Mr. Lentini, assert his Fifth Amendment rights

7 However, in anticipation -- and I certainly say  
8 this as strongly as I can, we must, I believe, advise my  
9 client, and he has already acquiesced in this, that we must  
10 call the co-defendant Lentini in his behalf because of the  
11 wording of the particulars of that particular count.

12 On these three grounds, your Honor, I would  
13 move respectfully that the defendant Dominick Lessa be  
14 severed from the trial of this case.

15 MR. WARNER: To whatever extent it is important  
16 to your Honor, I spoke with the attorney for Mr. Lentini  
17 about the possibility of Mr. Lentini testifying on behalf  
18 of my client, and his attorney authorized me to say that  
19 it was his intention, and he believed it was his client's  
20 intention, not to testify for anybody or on behalf of or  
21 against anybody if he could help it.

22 THE COURT: He may or may not be able to help it.

23 MR. SALKO: Did you say he may not be able to  
24 help it? May not be able to help whom? My client?

25 THE COURT: Stay with it, counsellor. If your

mind drifts even the slightest bit in this courtroom, you are lost.

I will rule on this tomorrow morning. The reason I can't rule now is, and I will be very honest with you, because any time anybody asks for more particularization, I don't have the entire bills of particulars and the indictment in my head, so I can't do it right off the top of my head. I have to sit down and figure out if there is a fair particularization. If there is, fine. If there is not, we will see if there can't be made a fair particularization.

As for the motion to sever, I read the indictment. I don't see that it necessarily states multiple conspiracies as you do, but I would be willing to take another look at it.

You know, I can give you lightning justice but I am not sure that lightning justice is justice at all.

Do you have a notice of appearance filed?

MR. SALKO: Certainly.

THE COURT: With your phone number?

MR. SALKO: Yes, sir.

THE COURT: Someone will call you tomorrow in the morning and read you whatever endorsement, or order, or whatever I am to call it -- on oral motion I can't make



1 bp13

2 it an endorsement because I can't hook it on to anything else

3 MR.SALKO: It's all right with me, Judge.

4 I will be in the building tomorrow morning anyway.

5 May I check with your secretary with respect to it, your  
6 Honor?

7 THE COURT: Surely. 16th floor.

8 MR. WARNER: Your Honor, on the question of  
9 severance, since it was last introduced, I would like to  
10 speak to that first.

11 I understand that everybody joins in that motion,  
12 and I join in that motion with respect to the defendant  
13 Coriale, and I would like to point out to your Honor that  
14 Mr. Lentini actually may very well be able to avoid testifying  
15 since he probably will not have been sentenced prior to  
16 trial, and he may still assert his Fifth Amendment rights.

17 THE COURT: I don't know. I will be very  
18 honest with you. I don't know.

19 MR. WARNER: I understand. The thrust of my  
20 application concerns my letter to your Honor dated November  
21 30, 1973.

22 THE COURT: Right. That letter is four pages  
23 long and we received, thanks to you, a copy of a letter  
24 dated January 2nd.

25 MR. WARNER: That had been delivered by hand to

me and to your Honor's chambers subsequently. The original was delivered by hand.

THE COURT: Unfortunately --

MR. WARNER: It got lost?

THE COURT: Yes. So may I suggest that other counsel here may want to get out, so let's hold up your matter until the end.

MR. SUNDEN: On behalf of the defendant Butch Ware, I returned this afternoon, your Honor, because you stated that you would make a ruling this afternoon regarding the motion previously made. My man is named solely in the conspiracy count, and there was a motion to dismiss that count against that man, and your Honor stated that you would reserve decision until there was some greater particularization made as to my man because of the fact that, since he is not named in any substantive count or any overt act, the only particularization I have at all to prepare this man's defense is the bald statement in the bill of particulars supplied by the government that the man entered November, '71. That is the only fact on which I can prepare a defense, and I might state that that is, I think, less than something, less most than an attorney needs to prepare a proper defense.



1           THE COURT: I understand.       Unfortunately, as  
2 perhaps you noted during the morning, I reserved decision  
3 on some eight or nine motions including yours.  
4

5           MR. SUNDEN: Yes.

6           THE COURT: I really have not gotten to yours  
7 yet. I would love to be able to give you an answer right  
8 now, but I can't. I will arrange to have a phone call made  
9 to you, Mr. Sunden, with respect to this.

10          MR. SUNDEN: Thank you.

11          THE COURT: Gentlemen, do you want to stay?

12          MR. OPPENHEIMER: The only thing I was going to  
13 say is that if it would be of assistance to the Court,  
14 I am in a position to phone your Honor's chambers with  
15 authorities in support of our motion for a hearing.

16          THE COURT: I think you mentioned them already,  
17 and I have them. If you want to, I will be glad to get  
18 them. Talk to my law clerk.

19          Mr. Lopez?

20          MR. LOPEZ: Just one clarification.

21          Joseph Di Napoli is mentioned in two counts in  
22 the indictment. He is mentioned in the conspiracy count,  
23 although no overt act is alleged against him. He is also  
24 mentioned in count 21 wherein the government will claim,  
25 through that count, that in mid-December of 1971 he trans-  
ferred or sold with or to a Pat Dilacio a kilo of heroin

in the amount of \$22,000.

Of course, the government has indicated to us that Pat Dilacio is one of the parties that has been severed. He is not before the Court. Apparently he has absconded.

Defense counsel, of course, are concerned by the lack of particularization in these matters and, of course, I would like very much, when your Honor is considering similar motions made by counsel, that you also consider this additional motion. We may even have a wade problem here. I don't know.

By reading this count, I get the idea that there must be a third party involved here.

Now, of course, we come into areas which are evidentiary in nature. But, on the other hand, they may touch on other problems, and I think that at this late stage Di Napoli certainly would be entitled to know if there were any third parties that were part of this transaction, since the count doesn't tell us.

Moreover, it will permit us to discuss and prepare a defense to the count, which is something that we cannot properly do as it is now stated, your Honor.

THE COURT: Fine. Mr. Lopez, I understand that you went down with Mr. Delbarian to see about the setup?

MR. LOPEZ: We have good news and we have bad



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2 news.

3 The good news is that we have all the seating  
4 arrangements perfected.

5 The bad news is that the custodian does not  
6 agree with us, Security does not agree with us, and there  
7 just isn't enough room.

8 The government may have spent a million dollars  
9 on this operation, and I hope he is not going to use any  
10 of the money that we hope to suppress on Wednesday toward  
11 this investigation, but, anyway, we are making inroads, y  
12 Honor.

13 I spoke with the Chief United States Marshal,  
14 and I explained to him the problem.

15 He is going to explore it, and the custodian  
16 is going to try to steal two additional tables to put in  
17 the room 110.

18 I think that the problem, as far as seating  
19 arrangements are concerned, will be that there will be 25  
20 attorneys, and we will need four tables similar to the one  
21 that we have in this courtroom. The attorneys will sit  
22 the tables in an L-shape facing the jury, and, your Honor  
23 it will be in an L-shape. I think that is the only  
24 solution.

25 Hopefully, we can get the defendants to sit

behind each of their attorneys so that there will be a double row.

Some of defense counsel have expressed the feeling that they would like to stay away from the regues gallery type of thing where all the defendants are sitting together, and Mr. Phillips is waving his hand and talking about a conspiracy. We want to make it as difficult for him as possible.

THE COURT: That's why I gave you the job.

MR. LOPEZ: Yes, Judge.

Now, with respect to the seating arrangements, we saw the order of the indictment which Mr. Phillips placed the defendants in, so we have decided to reverse the order and to have No. 1 counsel, the most innocuous members of the indictment, in other words, the last shall be first and the first shall be last. We are operating on that theory hoping that that bibilical premise may have some fruition when the trial is to commence, but I will be able to have more to report to your Honor on Wednesday.

THE COURT: Mr. Lopez, I will tell you, anything that is reasonable that you work out is fine with me.

MR. LOPEZ: Well, I am checking with Security and I am checking with the custodian, and I think that if I solve these problems, no one is going to be happy.



On the other hand, no one will have very serious objection.

THE COURT: Well, let's make everyone just a little bit unhappy.

MR. LOPEZ: Yes, your Honor, and I will prepare a graph for your Honor, and I will prepare one for the stenographer, too.

THE COURT: Absolutely. Don't ever forget the court reporter.

MR. OPPENHEIMER: Mr. Lopez brought something up that I want to discuss again, which furnished food for thought.

If the Court plans on having other than usual security around the courtroom, I would simply say that that poses a problem for the defendants, with the jury coming in and out, and with numerous marshals around.

We would hope that spectators would not be frisked. We would hope that that would not be their plan. It had not been mentioned but I would hope that that would not happen.

THE COURT: Who wants to have the spectators frisked?

MR. OPPENHEIMER: I said that it had not been brought up but there was some talk of security, so I just thought of it.

1  
2 THE COURT: That's not the kind of security  
3 that we are talking about.

4 MR. LOPEZ: One other thing, your Honor.  
5 I spoke with Mr. Farley of the United States Marshals  
6 Office. During the course of trial, I knew that some of  
7 defense counsel will want to speak with some of their clients  
8 who are incarcerated. I estimate, your Honor, roughly  
9 at least half of the defendants in this case are in jail,  
10 approximately half, perhaps more. Mr. Phillips may be  
11 able to elucidate further on that.

12 If we end court sessions here at 4.30, it would  
13 mean that if the defendants are kept in the United States  
14 Marshals Office, they will lose their dinners at West  
15 Street, and the marshal will have to keep their vehicle  
16 and transportation available.

17 Perhaps I can speak to the warden at West Street  
18 and hopefully he will permit a visit to their visiting room  
19 there at certain hours in the evening during the course of  
20 trial so that we can have access to our clients, and if I  
21 represent that I have spoken to your Honor about this  
22 problem, and if the thing can be feasibly worked out, it  
23 would be helpful, at least, to the defense so that we  
24 can discuss things with them.

25 THE COURT: I appreciate your work in this area,



1  
2 Mr. Lopez, and it relieves me of a burden that I really do  
3 need right now.

4 MR. LOPEZ: Fine. Thank you, your Honor.

5 THE COURT: All right. Now, gentlemen, if you  
6 would like to leave, I don't see any necessity for your  
7 staying.

8 MR. LOPEZ: Fine, your Honor.

9 THE COURT: And I am not insulted if you leave,  
10 all right?

11 MR. WARNER: Mr. Phillips, I would appreciate it  
12 if you would not leave.

13 (Mr. Oppenheimer, Mr. Lopez, Mr. Sunden and  
14 Mr. Salke left the courtroom.)  
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16  
17  
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1 THE COURT: Mr. Warner, do you want to kick  
2 off?  
3

4 MR. WARNER: Yes, your Honor.

5 Your Honor, my first application is based upon  
6 my letter to your Honor dated November 30, 1973, a copy of  
7 which was sent on that same day to Mr. Phillips.

8 The letter sets forth certain representations  
9 and certain agreements that Mr. Phillips made to me when  
10 we met in pretrial conference that your Honor requested that  
11 we have.

12 Although that does relate to the previous indict-  
13 ment and not the new indictment, as I pointed out in my  
14 most recent letter, I think dated January 2, there has been  
15 no substantive change in the indictment as regards my  
16 client, so I would consider that there is no basis for  
17 changing this agreement.

18 I would ask, first, skipping beyond the  
19 beginning, for Mr. Phillips to reaffirm to the Court that  
20 the general information they set forth beginning on Page  
21 2 and ending in the top third of Page 3 is still operative,  
22 if you will excuse the expression.

23 THE COURT: I don't know what the word  
24 "operative" means and I never knew what the word "inoperative"  
25 meant, but it has been discussed quite a bit so I will



excuse your expression.

MR. PHILLIPS: Your Honor, I don't dispute anything that Mr. Warner has in his November 30th letter relating to an arrangement that we made relating to discovery

THE COURT: No, no. What he wants, first of all, is, were there any post arrest statements made by your client?

MR. PHILLIPS: Those were turned over to Mr. Warner.

THE COURT: Those were?

MR. PHILLIPS: Yes.

MR. WARNER: Well, they hardly rise to the level of statements. I guess that is the reason for this application.

THE COURT: Was there any electronic or wire surveillance of Ceriale?

MR. PHILLIPS: There was none in this case. I have the detective this afternoon checking to see whether Ceriale appeared on any of the wires, specifically the one wire that he would have appeared on which is Ray's stationery store, and he is going to let me know today.

THE COURT: As of right now you know of none?

MR. PHILLIPS: That's right.

eob-3

1  
2 MR. WARNER: But you will inform me about that?

3 MR. PHILLIPS: Yes.

4 THE COURT: And if it does show up, he will tell  
5 you?

6 MR. PHILLIPS: It is only one or two conversa-  
7 tions at most, and they are probably innocuous, and I will  
8 furnish them to him .

9 THE COURT: Let the record reflect whether they  
10 are innocuous or not innocuous.

11 MR. PHILLIPS: I mean that they don't relate  
12 to the narcotics transaction.

13 THE COURT: All right. The Government has the  
14 fourth representation. The Government will not introduce  
15 any drugs which it will allege were handled by Ceriale or  
16 were in his dominion or control, is that correct?

17 MR. PHILLIPS: That's correct.

18 MR. WARNER: Your Honor, I think your Honor  
19 skipped Number 3.

20 THE COURT: Did I? I am sorry. The Government  
21 has not recording resulting from electronic or wire sur-  
22veillance of any defendant which inculcates Ceriale.

23 MR. PHILLIPS: That is correct.

24 THE COURT: (5) The Government will not  
25



1  
2 introduce any physical evidence at trial which it will alle  
3 was taken from Cerialle or from a place within his dominion  
4 or control.

5 MR. PHILLIPS: That is correct.

6 THE COURT: I don't know what 6 means, but I  
7 will read it.

8 "No physical evidence as to which my client  
9 would have standing to object regardless of whether such  
10 objection would be sustained will be introduced by the Gove  
11 ment at trial."

12 MR. PHILLIPS: That is correct. That I assume  
13 he means there is no physical evidence where there might be  
14 a question of the legality of the seizure that Mr. Cerialle  
15 would have standing to object.

16 MR. WARNER: That is correct.

17 MR. PHILLIPS: As opposed, for example, to  
18 evidence taken directly from his person, not from his person  
19 but yet have standing to object to its seizure.

20 THE COURT: Just so long as everybody understand  
21 it.

22 MR. PHILLIPS: Yes, your Honor.

23 THE COURT: Then on Overt Act No. 7, the  
24 Government will not introduce any evidence at trial that  
25

1 eob-5

2 any evidence at trial that any narcotic drug was present  
3 at the alleged meeting. I don't have the indictment. What  
4 is Overt Act No. 7?

5 MR. WARNER: It says that Lentini and my client  
6 and Frank Stacci met at a barber shop on Pleasant Avenue  
7 and as supplied in the bill of particulars, for the purpose  
8 of Mr. Lentini informing Mr. Stacci that my client was going  
9 so supply mannite to cut heroin.

10 MR. PHILLIPS: I believe the question was  
11 will there be any --

12 THE COURT: Was there any narcotic drug involved  
13 in the barber shop meeting in May or June?

14 MR. PHILLIPS: Well, involved is a broad  
15 question.

16 THE COURT: Physically present.

17 MR. PHILLIPS: No.

18 THE COURT: None physically present.

19 MR. PHILLIPS: No.

20 THE COURT: I am not sure what this means, but  
21 at that meeting, or concerning that meeting -- the Government  
22 will not introduce any evidence of any written memo taken  
23 at the alleged meeting.

24 MR. PHILLIPS: That is correct.

25 THE COURT: Nor at any other time concerning



1  
2 such meeting.

3 MR. WARNER: By anyone, Federal agent or ot  
4 wise.

5 THE COURT: I am not sure of that. You won'  
6 be introducing such a memorandum into evidence, is that  
7 the question?

8 MR. PHILLIPS: I assume that what Mr. Warner i  
9 referring to is a memo made contemporaneously with the  
10 meeting. There were no minutes taken before the meeting,  
11 example.

12 THE COURT: They didn't have their corporate  
13 secretary present.

14 MR. WARNER: I never thought there were any  
15 minutes.

16 THE COURT: Well now, look, Mr. Warner, I am  
17 quite sure that some place in the 3500 material there is  
18 reference to this meeting.

19 MR. WARNER: I understand that. I am talking  
20 about --

21 THE COURT: That is why I specified a question  
22 as to whether it was going to be introduced in evidence  
23 by the Government. I assume they are not going to be  
24 introduced as 3500 material.  
25

1  
2 Is this the old indictment that we are talking  
3 about?

4 MR. WARNER: It is the old indictment but  
5 the new indictment is the same.

6 THE COURT: I understand, but the numbers may  
7 be different.

8 MR. WARNER: Yes. 23, 24 and 27.

9 THE COURT: That is what I thought. Concerning  
10 counts 23, 24 and 27, the Government will introduce direct  
11 testimony by a co-conspirator concerning the role played by  
12 Ceriale but no statements of co-conspirators will be intro-  
13 duced against Ceriale as to these counts. I am not sure of  
14 exactly what that means, but I would like to find out.

15 MR. WARNER: That means, your Honor, that there  
16 will probably be direct testimony by Frank Stacci concerning  
17 I am sorry. That there will be direct testimony --well, I am  
18 correct -- by Frank Stacci or others who were present concerning  
19 what happened but there will be no evidence of statements  
20 by anyone else who was present who is testifying that impli-  
21 cates my client.

22 MR. PHILLIPS: There will be testimony by Govern-  
23 ment witnesses regarding statements by co-conspirators  
24 relating to Ceriale. There will be that throughout the trial,  
25 and Ceriale is included.



1  
2  
3 MR. WARNER: I was told that that was not going  
to be the case.

4 THE COURT: That is what I want to clear up.

5 MR. PHILLIPS: I think what Mr. Warner is  
6 referring to, or what I understood this to mean was where  
7 there are going to be any written statements or taped state-  
8 ments introduce of a co-conspirator that referred to Corial  
9 that were taken during that conspiracy. The answer to that  
10 is no.

11 THE COURT: We are talking about the substantive  
12 count at this point.

13 MR. PHILLIPS: That is correct. And I am still  
14 not clear what he is asking but if he is asking --

15 MR. WARNER: I will make it clear. I will  
16 try to anyway.

17 THE COURT: That is what we are here for.

18 MR. WARNER: There are two types of testimony  
19 that may be put forth in this case. One is direct  
20 testimony by an individual who was present as to what he  
21 saw.

22 The other -- and this is what I am directing my  
23 point at -- is testimony by a Government witness as to state-  
24 ments made by co-conspirators who will not themselves be  
25

1  
2 testifying and may never be testifying which statements  
3 inculcate my client; for example, if we go to the overt act,  
4 a statement by Mr. Lentini inculcating my client while he  
5 stands there. But that statement would get into evidence  
6 presumably through Mr. Stacci who is the Government's witness  
7 and would be testifying about that.

8 MR. PHILLIPS: That's right.

9 THE COURT: I don't know the answer to it,  
10 gentlemen. The question is, is that kind of a statement going  
11 to be used?

12 MR. PHILLIPS: Yes, statements by Lentini, for  
13 example, to Stacci, will be introduced.

14 THE COURT: All right. Let me continue down.  
15 Just so long as -- was a copy of the pre-arrangement interview  
16 of Ceriale delivered?

17 MR. WARNER: Yes.

18 THE COURT: Video and graphic recordings, if any?  
19 Do you have any that you intend to introduce?

20 MR. PHILLIPS: No.

21 MR. WARNER: By the way, your Honor, are there  
22 any that involve my client?

23 MR. PHILLIPS: Not that I am aware of. There  
24 were some movies taken of this area and I asked the  
25 detectives to look through the movies and see if Ceriale



1 appeared and they did and they did not find any.

2 I am going to make a second request, in any  
3 event, and if they should appear I may well use it, and  
4 if they find them, which I don't really anticipate that they  
5 will since they didn't the first time, I will make them avail-  
6 able.  
7

8 THE COURT: All right. Chemical analysis.  
9 How about that?

10 MR. PHILLIPS: Well, that has been turned over,  
11 that is, reports of chemical analysis have been turned over  
12 to counsel.

13 THE COURT: Is that the one with the New York  
14 City police involved also which Mr. Dowd was talking about  
15 this morning?

16 MR. PHILLIPS: Yes.

17 THE COURT: Are you trying to get from the police  
18 the work sheets or at least what type of chemical analysis  
19 was made?

20 MR. PHILLIPS: I have already, that directive  
21 to give me that information tomorrow morning.

22 THE COURT: Good. You are going to turn them  
23 over I assume to counsel?

24 MR. WARNER: I have those. But my question  
25 is I want to have some specific information as to which of

1 those analyses correspond to drugs which will be introduced  
2 as against my client?

3  
4 MR. PHILLIPS: All the drugs are going to be  
5 introduced in this case on the conspiracy count, and his  
6 client is named in the conspiracy count so to that extent  
7 the drugs that are going to be introduced, of which he has  
8 copies of the chemical reports are going to be introduced  
9 against his client.

10 MR. WARNER: Are there any drugs that relate to  
11 the substantive count, 23, 24 and 27?

12 MR. PHILLIPS: 27? No. 24? No. 23 was  
13 the other?

14 MR. WARNER: Yes.

15 MR. PHILLIPS: No.

16 MR. WARNER: All right.

17 THE COURT: Now, that takes care of the repre-  
18 sentations and questions that we had befo?e, right?

19 MR. WARNER: Yes, your Honor.

20 To give a brief introduction, your Honor, before  
21 we get to the other points, it is my client's position that  
22 he is totally and completely innocent of all of these charges,  
23 not unlike some of the other defendants, and --

24 THE COURT: Mr. Warner, are you retained?  
25



1  
2 MR. WARNER: Retained. Consequently, it is  
3 extremely important for me to have as much information as  
4 possible.

5 I will say in advance that some of this informa-  
6 tion that Mr. Phillips has agreed to supply might not perhaps  
7 be required as a matter of law in the absence of his agree-  
8 ment.

9 However, he agreed, and I am making this applica-  
10 tion based upon our stipulation which is contained in this  
11 letter, and based on that stipulation, I have not gotten a  
12 tremendous amount of material that was promised to me. I  
13 think I noted on the letter that your Honor has where I have  
14 not been supplied with information that I requested.

15 THE COURT: Well, the dates, days and times of  
16 day when Cerialo allegedly committed those acts which the  
17 Government will allege constituted his entry into the con-  
18 spiracy.

19 MR. WARNER: I didn't get that. All I received  
20 was a general statement that he entered the conspiracy in  
21 the spring of '72. That is the sum total of all the --

22 MR. PHILLIPS: '72 or '71?

23 MR. WARNER: '71. I am sorry. That is the sum  
24 total of all the information that I have gotten which was  
25 promised in these three subdivisions.

1  
2 THE COURT: Do you have the three subdivisions?

3 MR. PHILLIPS: I don't have the copy of the  
4 letter, your Honor. I tried to find out before I came up.

5 MR. WARNER: So your Honor can read it perhaps  
6 I will show Mr. Phillips my letter.

7 THE COURT: Sure.

8 (Pause.)

9  
10 THE COURT: It is kind of hard to respond if you  
11 don't know what you are responding to.

12 MR. PHILLIPS: Is this under general information?

13 THE COURT: No, it is on Page 3, down at the  
14 bottom.

15 (Pause.)

16 MR. PHILLIPS: Well, your Honor, I don't recall  
17 that I agreed to give all of this information to Mr. Warner.  
18 However, if I did agree to give all of this information to  
19 Mr. Warner under the old indictment, the indictment was --  
20 I also met with counsel pursuant to your Honor's directive  
21 on November 16 and concluded that while some counsel wanted  
22 some things and other counsel wanted other things, and I  
23 agreed to give some counsel some things and some counsel other  
24 things, when the indictment was superseded and the new indict-  
25 ment was filed, I sent a copy of that indictment to all



1 counsel with a covering letter dated December 10th setting  
2 forth explicitly what the Government intended to give by way  
3 of bill of particulars and discovery in connection with the  
4 superseding indictment and set forth a time for a discovery  
5 to be completed on December 20 that we had on December 20,  
6 all counsel appeared, or their representatives appeared and  
7 at that time I said with respect to the Government's bill  
8 of particulars that that, it was the Government's position  
9 that it constituted the Government's obligation  
10 under the law to provide a bill of particulars with respect  
11 to that indictment.  
12

13 My thinking behind this was that it was certainly  
14 easier to provide one bill of particulars across the board  
15 for all counsel to prepare for trial where some counsel  
16 hadn't asked for a great deal of information and other counsel  
17 had asked for a lot more detailed information than what I  
18 thought they were entitled to have, I submitted the bill  
19 of particulars to cover the indictment as to all defendants  
20 and all counsel.

21 It would be the Government's position with  
22 respect to the Paragraphs 1, 2 and 3 at the bottom of Page  
23 3 that the defendant is not entitled to have as detailed  
24 a description of what he is asking for in those paragraphs.

25 I did give to counsel the date or approximate

1  
2 time to the best of the Government's knowledge when Mr.  
3 Cerialle entered this particular conspiracy as I did with  
4 all the defendants as to -- with all the defendants as to  
5 their entry into the conspiracy.

6 MR. WARNER: Your Honor, I don't want to  
7 repeat myself so I will just say that I don't think the argu-  
8 ment concerning the superseding indictment has any validity  
9 whatsoever.

10 THE COURT: All right. Turning over to Page 4?  
11 Have you got Page 4?

12 The name and address of the barbershop.

13 MR. PHILLIPS: We gave that, your Honor. We also  
14 give --

15 THE COURT: I don't know what this means. The  
16 exact location of the parties?

17 MR. WARNER: Where were they in relation to  
18 the barber shop? It was given though, your Honor. They  
19 said he was on the sidewalk.

20 THE COURT: Names of others present, and you  
21 have made a note here that Lentini and Stacci --

22 MR. WARNER: Yes, your Honor.

23 MR. PHILLIPS: We gave him that, I believe.

24 MR. WARNER: Well, it was actually given in a  
25 somewhat negative manner. I was told that Stacci and Lentini



1  
2 were there with my client. I wasn't told that that repre  
3 sents all the people that were there.

4 MR. PHILLIPS: I will represent that it does

5 THE COURT: To the best of your knowledge,  
6 is that what it is?

7 MR. PHILLIPS: Even better than that, the  
8 Government's proof will show that they were the only ones  
9 there.

10 MR. WARNER: All right.

11 As far as No. 4 goes.

12 THE COURT: The date, day and time of day as  
13 precisely as possible of the alleged meeting.

14 MR. WARNER: We have got May to June.

15 THE COURT: Is that what it is, May to June?

16 MR. PHILLIPS: May or June. And we also point  
17 out it was in the afternoon. Beyond that, more particu  
18 the Government simply doesn't know. I pointed out --

19 THE COURT: All right. It says as precisely as  
20 possible. If you don't know it, you don't know it.

21 MR. PHILLIPS: With respect to the rest of the  
22 letter, your Honor --

23 MR. WARNER: Excuse me, Mr. Phillips, just a  
24 moment. Your Honor, I presume that that means that when  
25

1  
2 the Government's witnesses testify they will substantially  
3 say May or June and they are not going to be able to pin  
4 it down closer.

5 MR. PHILLIPS: They might not even be able to  
6 pin it down to May or June, but I believe that that is when  
7 it was.

8 MR. WARNER: All right.

9 And the balance, of course, your Honor, concerns  
10 23, 24 and 27 again.

11 MR. PHILLIPS: If it will shorten things, your  
12 Honor, although I don't believe that all of these details  
13 with respect to, at least, Ceriala, were given on the sub-  
14 stantive counts, 11, 12 and 15 --

15 THE COURT: No. Those are now 20 -- whatever  
16 it is, 22, 23 and 25.

17 MR. WARNER: 22, 23, 24 and 27.

18 MR. PHILLIPS: They are different. I can  
19 represent and will state it on the record to Mr. Warner that  
20 the Government doesn't have any more precisely the dates  
21 than they are in the indictment, nor the days, but that the  
22 possession occurred in the evening hours, that, the witnesses  
23 will establish that it occurred in the evening hours.

24 And we will also represent that the role played  
25 by Ceriala was to provide the mannitol required to mix the



heroin and that Ceriale was not the principal, that is, he is not charged as a principal, that is, he was not the principal distributor or possessor. He was an aider and abettor.

MR. WARNER: Was he present?

MR. PHILLIPS: No.

MR. WARNER: He was not present at any one of those occasions?

MR. PHILLIPS: He was not present when the heroin was possessed or distributed, that is correct.

MR. WARNER: Well, your Honor, it seems to me that I have two alternatives: One is to burden the Court with Mr. Phillips with a continued examination of Mr. Phillips, or else to simply ask the Court that Mr. Phillips continue along the same lines and tell me exactly what my client did just as set forth here. How he got the mannite there, who he arranged it with, who else was present, and so on. Because that was what the promise was.

THE COURT: That is a full discovery of his entire case. I must admit that I think that the particularization given to you by Mr. Phillips today goes beyond the particularization required by the cases and law in this Circuit, at least.

I think you are coming out ahead right now.

MR. WARNER: Your Honor, I believe that I am ahead of the law, but behind on the stipulation and I think that the stipulation makes the law.

THE COURT: Well, I am not going to force Mr. Phillips to go further in this connection at this time. However, there is something here which bothered me. I just assumed -- turning back to Page 1 --

MR. WARNER: Oh, yes. Those are four points in which Mr. Phillips and I didn't agree, and I requested that your Honor rule in my favor so that I could get that information.

THE COURT: Let's go. Do you have the Page 1 and Page 2?

MR. PHILLIPS: Yes.

THE COURT: Do you want to read it?

MR. PHILLIPS: Well, I know exactly what Mr. Warner is referring to in Paragraphs 1 and 2. And I know what he is referring to in Paragraph 3, and Paragraph 4 is a request for Brady material, so I would be prepared to respond if your Honor wants a response.

THE COURT: All right. You don't have to respond as far as Brady material is concerned. Give it to him. That takes care of 4.



1 All right. I will hear you on 1 and 2 first

2  
3 MR. PHILLIPS: Well, 1 and 2 refer to pre-arrest  
4 statements first of all by Mr. Ceriale.

5 Now pre-arrest statements really by Mr. Ceriale  
6 constitute the evidence in the Government's case. This is  
7 what Mr. Ceriale is saying during the course of the con-  
8 spiracy.

9 Certainly the Government would oppose the dis-  
10 covery of that as not being within Rule 16.

11 Number 2 is statements of co-conspirators that  
12 were made -- well, which would be intended to be introduced  
13 at trial.

14 Now, if these are statements that were taken  
15 and reduced to writing as 3500 material expressly excluded  
16 from Rule 16, which is the only thing that I can think of  
17 that Mr. Warner is referring to. And obviously statements  
18 prior to arrest would constitute the same

19 With respect to Number 3, he is asking --

20 THE COURT: Let me take care of 1 and 2. As  
21 those, the requests will be denied.

22 Now, the third request is about Joe Red. He  
23 wants to know why --

24 MR. WARNER: Who was originally -- John Doe a/k  
25

"Red." Joe -- "Red," and then it became Joseph Cerialo.

MR. PHILLIPS: Mr. Warner asked me in my office why he was called Joe Red, and I said because he has red hair, and he insisted he didn't have red hair.

THE COURT: I have never seen the man. I don't know.

MR. WARNER: Actually you did see the man, your Honor, but you didn't know who he was.

THE COURT: You mean I might have seen him but I didn't look at him. Or looked at him but not have seen him

MR. WARNER: I really wanted not so much to know why he was known as Joe Red, but the circumstances which led to his identification from the description Joe Red or from the nickname Joe Red, because on the basis of that I would like to pursue the possibility of --

MR. PHILLIPS: This is a discovery request, and I don't think that there is any way that this comes under Rule 16, such a request.

THE COURT: I don't think it does either but it sounds like the type of thing that you gentlemen might work out between yourselves. I am not going to order you to do it, but if the guy has red hair and lately he dyed it, that is a possibility. I hate to tell you what I have seen



1  
2 happen with defendants in courtrooms, including the guy with  
3 the beard who shaved it off and the guy without the beard  
4 who drew one, and so on and so forth.

5 I am not going to order it, but it sounds like  
6 it may be something that you fellows can work out between  
7 yourselves on an informal basis, but I am not going to order  
8 it.

9 I think that winds it up.

10 MR. WARNER: Your Honor, there is a little bit  
11 more.

12 THE COURT: Did I miss something?

13 MR. WARNER: Well, we have gone past something.  
14 I hope that your Honor missed it because if your Honor didn't  
15 miss it then your Honor has ruled against it, and that is set  
16 in my letter of January 2nd, concerning the 20 to 30  
17 hours of debriefing material on Frank Stacci, which is 3500  
18 material. I understand the 3500 material is not required  
19 as a matter of the rules and law to be given until after the  
20 witness has testified but as a practical matter of handling  
21 the trial generally in this court it is handled on a pre-  
22 trial basis and for us, for me to be able to deal with 20 to  
23 30 hours of tapes and for the other counsel to be able to  
24 deal with it becomes impossible, in fact is impossible.  
25

1  
2 THE COURT: What is involved? Do we have one  
3 witness who talked for 20 or 30 hours?

4 MR. PHILLIPS: No, I don't know where Mr. Warner  
5 got 20 to 30 hours.

6 MR. WARNER: I thought you said that at the last  
7 discovery meeting --

8 MR. PHILLIPS: I don't think so.

9 MR. WARNER: How many hours is it?

10 MR. PHILLIPS: I don't know how many hours it  
11 is, but it has been already turned over. It has already been  
12 turned over, your Honor, and it has been copied. And copies  
13 have been made of it, and these copies are in the possession  
14 of Mr. Oppenheimer. Your Honor today assigned Mr. Dowd to  
15 be in charge of handling all of the 3500 material.

16 THE COURT: No. I told Mr. Dowd that he was in  
17 charge of getting the tapes reproduced.

18 MR. PHILLIPS: That is what I mean. I am just  
19 talking about the tapes. I didn't mean all the 3500 material.  
20 I meant all 3500 material that consists of tapes.

21 Now, we are making available to counsel something  
22 that your Honor has directed to be turned over the night  
23 before the witness testifies. We are making it available  
24 ten days before the trial even starts. They want us now to  
25



1 eob

2 transcribe it for them, that is Mr. Warner does. I suppose  
3 the next thing he wants us to do is to provide a critique  
4 of where our witnesses might be vulnerable on cross-  
5 examination.

6 THE COURT: I doubt if he would go that far,  
7 Mr. Phillips.

8 MR. WARNER: But I wouldn't object.

9 THE COURT: No, of course you wouldn't object.

10 MR. WARNER: Well, your Honor --

11 THE COURT: If that is what we are talking about  
12 the tapes --

13 MR. WARNER: It may be that I misunderstood.  
14 Obviously I did. If there are not 20 to 30 hours, if they  
15 are a manageable number of hours on the tape, I will listen  
16 to them.

17 THE COURT: I understood from this morning's  
18 go-round that the assigned counsel were going to buy the tapes  
19 at \$15 a pop-out of their own pocket, so that I gather that  
20 it is not that much.

21 MR. WARNER: I didn't know that that was in refer-  
22 ence to the tapes. I thought it was in reference to  
23 the --

24 THE COURT: Get a hold of Mr. Dowd and tell him  
25

to make a copy of them, okay.

MR. WARNER: Your Honor, I just have two further points. The first, based on the material that has been represented, the information that has been represented today, your Honor, and the position of my client be put in, I would move both for a severance on his behalf and, in addition, for a dismissal or in the alternative for a dismissal. Since he was not at any time in a position of having dominion or control over the heroin or its distribution, or its possession a serious constitutional question on his behalf arises as to how he ever could have gotten out of it since at no time did he have control over the material that he was supposed to be conspiring in regard to.

THE COURT: I think the allegation that he aided and abetted others in the possession and distribution. As such it is then necessary that have direct dominion and control over the heroin or narcotic substance involved, and under the circumstances, I will deny both motions.

MR. WARNER: I will say, your Honor, I understand that aspect of the law, but I was pointing out that the question arises as to how he could have withdrawn from this conspiracy once he has been labeled with involvement with a drug over which he has no control.